

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/STOP PRESS: POLICING AND CRIME ACT 2009

## **POLICE (VOLUME 36(1) (2007 REISSUE))**

### **STOP PRESS:**

The Policing and Crime Act 2009 makes provision (1) about the police; (2) about prostitution, sex offenders, sex establishments and certain other premises; (3) for reducing and dealing with the abuse of alcohol; (4) about the proceeds of crime; (5) about extradition; (6) amending the Aviation Security Act 1982; (7) about criminal records, including amendments to the Safeguarding Vulnerable Groups Act 2006; (8) conferring, extending and facilitating search, forfeiture and other powers relating to the United Kingdom's borders and elsewhere; and (9) for combatting crime and disorder. The 2009 Act received the royal assent on 12 November 2009 and ss 100, 111, 112(3)-(9), 113-117 and Sch 8 (in part) came into force on that date. Sections 88 and 91 came into force on 30 November 2009, and ss 6-9, 26, 51, 61, 62, 64, 67-78, Schs 7 (in part) and 9 (in part) came into force on 25 January 2010: SI 2009/3096. The 2009 Act Schs 7 (in part) and 8 (in part) came into force on 12 January 2010: s 116(6). Sections 98, 99, 101, 112 (in part) and Sch 8 (in part) came into force on 25 January 2010: SI 2010/52. The 2009 Act ss 10-13, 28-33, 79, 80, 83, 84 (for certain purposes), 97, 110, Schs 4, 6, Sch 7 paras 27-44, and Sch 8 (in part) came into force on 29 January 2010: SI 2010/125. The 2009 Act s 1 came into force on 15 March 2010: SI 2010/125. The 2009 Act ss 3, 4, 112 (in part) and Sch 8 (in part) came into force on 19 April 2010: SI 2010/999. The 2009 Act s 112 (in part), Sch 7 (in part) came into force in relation to Wales only on 8 May 2010: SI 2010/999. The 2009 Act s 2 comes into force on 1 September 2010: SI 2010/999. The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

### ***Part 1 (ss 1-13) Police reform***

Sections 1-5 amend the Police Act 1996. By virtue of the 2009 Act s 1, police authorities are required, when discharging any of their functions, to have regard to the views of the public in their area concerning policing. Section 2 establishes the Police Senior Appointments Panel, which has the function of advising the Secretary of State on any matter on which it is consulted by the Secretary of State in connection with senior officer appointments, on consents to deputy chief constables and assistant chief constables fulfilling the role of the chief constable for a period exceeding three months, and on consents for the second most senior officer in the City of London police to act as Commissioner for a particular period. Under s 3, regulations under the 1996 Act s 50 may make provision for payments to be made to senior officers who cease to serve before the end of their fixed-term appointment. The 2009 Act s 4 gives the Commissioner a formal role in appointments to the ranks of Assistant Commissioner, Deputy Assistant Commissioner and Commander in the Metropolitan Police. By virtue of s 5, agreements may be made between chief officers of police forces to carry out their functions through collaboration in the interests of the efficiency or effectiveness of policing. Section 6 amends the Police Act 1997 s 93 to enable an authorising officer acting under s 93(5)(a)-(c) to grant an authorisation to interfere with property on an application made by a member of the officer's own police force or by a member of another police force. The 2009 Act ss 7-9 amend the Regulation of Investigatory Powers Act 2000. The 2009 Act s 7 empowers a person who is a designated person by reference to an office, rank or position with a police force to grant an authorisation

for persons holding offices, ranks or positions with another police force to obtain communications data under the 2000 Act. Under the 2009 Act s 8, arrangements equivalent to those in the 2000 Act s 29(5) must be in force in relation to sources of police collaborative units comprising two or more police forces. A person who is a designated person for the purposes of s 28 or 29 by reference to his office, rank or position with a police force is entitled to grant an authorisation under s 28 or 29 on an application made by a member of another police force: 2009 Act s 9. Section 10 amends the 1996 Act to provide for an order-making power to amend s 97 to add further types of service that qualify as relevant service outside a police officer's own force. The 1996 Act is also amended by the 2009 Act s 11 so that the Secretary of State may make regulations concerning software used by the police. By virtue of ss 12 and 13, regulations requiring police forces to adopt particular procedures or practices or concerning common facilities or services need not apply to all police forces.

### ***Part 2 (ss 14-27) Sexual offences and sex establishments***

Section 14 amends the Sexual Offences Act 2003 by creating a strict liability offence which is committed if someone pays or promises payment for the sexual services of a prostitute who has been subject to exploitative conduct of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment. Equivalent provision is made in relation to Northern Ireland by the 2009 Act s 15. Section 16 amends the offence of loitering or soliciting for the purposes of prostitution, as set out in the Street Offences Act 1959 s 1, by introducing a requirement that the conduct must have been carried out at least twice in any three-month period. The 1959 Act is also amended by the 2009 Act s 17, Sch 1, which introduce a new penalty for those convicted of loitering or soliciting for the purpose of prostitution, allowing the court to make a rehabilitative order instead of imposing a fine or any other penalty. Section 18 amends the Rehabilitation of Offenders Act 1974 s 5 to apply a rehabilitation period of six months for those sentenced to an order following conviction for loitering or soliciting. Under the 2009 Act s 19, a new offence of soliciting is created which replaces the offences of kerb-crawling in a street or public place and persistent soliciting in a street or public place for the purposes of prostitution. Equivalent provision is made in relation to Northern Ireland by s 20. The courts are empowered by s 21, Sch 2 to close, on a temporary basis, premises being used for activities related to certain sexual offences. Sections 22-25 amend the Sexual Offences Act 2003. The Magistrates' Courts Act 1980 s 127 is disapplied by the 2009 Act s 22 in relation to applications for civil orders made under the Sexual Offences Act 2003 Pt 2 (ss 80-136). The 2009 Act s 23 raises the age of a child that must be at risk in order for a foreign travel order to be made, and s 24 extends, from six months to five years, the maximum duration of such an order. By virtue of s 25, offenders who are subject to a foreign travel order that prohibits them from travelling anywhere outside the United Kingdom must surrender their passports at a police station specified in the order. The 2000 Act s 53 is amended by the 2009 Act s 26 so that a maximum sentence of five years' imprisonment can be imposed in relation to cases involving the showing, taking or possessing an indecent photograph of a child. Section 27, Sch 3 add a new category of sex establishment called a 'sexual entertainment venue' to the Local Government (Miscellaneous Provisions) Act 1982 Sch 3, which brings the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the Local Government (Miscellaneous Provisions) Act 1982, which is currently used to regulate establishments such as sex shops and sex cinemas.

### ***Part 3 (ss 28-33) Alcohol misuse***

Section 28 amends the offence of persistently selling alcohol to children so that the offence is committed if alcohol is sold to an individual under the age of 18 on two or more occasions within three months rather than on three or more occasions within three months. The Confiscation of Alcohol (Young Persons) Act 1997 is amended by the 2009 Act s 29 so that

police officers can confiscate sealed containers of alcohol from young persons in public places without needing to prove that they were consuming alcohol or that they intended to consume alcohol in a public place. A person under the age of 18 commits an offence contrary to s 30 if he is caught with alcohol in a public place three or more times within a 12-month period. Section 31 amends the Violent Crime Reduction Act 2006 s 27(1) so that the police can issue directions to leave to persons between the ages of 10 and 15. The 2009 Act s 32 gives effect to Sch 4, which makes provision about mandatory licensing conditions relating to alcohol. Section 33 amends the Licensing Act 2003 ss 13 and 69 to allow members of a licensing authority to act as interested parties.

#### ***Part 4 (ss 34-50) Injunctions: gang-related violence***

Section 34 enables the court to grant an injunction in order to prevent a person from engaging in, encouraging or assisting gang-related violence (as defined) and/or to protect a person from gang-related violence. The possible effects that prohibitions or requirements contained in the injunction could have on the person are listed in s 35. Supplementary provision relating to such injunctions is made by s 36, including in relation to time limits and review hearings. Under s 37, an application for an injunction can be made by the police or a local authority. Before applying for an injunction, the applicant authority must consult with any local authority, any chief officer of police and any other body or individual that the applicant thinks it appropriate to consult: s 38. Provision for without notice applications is made by s 39. Section 40 prescribes the powers of the court to grant an interim injunction where the court adjourns a hearing of which notice has been given to the respondent. The court's powers to grant an injunction where it adjourns the hearing of an application which has been made without notice are specified in s 41. Provision is made by s 42 for the variation and discharge of an injunction. Under s 43, if a power of arrest has been attached to any of the prohibitions or requirements contained in an injunction, a police officer may arrest without warrant a respondent who is reasonably suspected to be in breach of that prohibition or requirement. Section 44 allows a court to grant a warrant for arrest if it believes that the respondent is in breach of any provision of the injunction. If a person has been arrested, with or without a warrant, s 45 empowers the court to remand a person for the purpose of medical examination and report if it has reason to consider that such a report will be required. Section 46 gives effect to Sch 5, which makes further provision about the powers to remand under ss 43 and 44. The Secretary of State is required by s 47 to issue and publish guidance in relation to injunctions. Rules of court may be made which provide that powers conferred on county courts are exercisable by judges of a county court and district judges: s 48. Section 49 defines various terms used in Pt 4. Under s 50, the Secretary of State is required to review the operation of Pt 4 and prepare and publish a report of that review.

#### ***Part 5 (ss 51-66) Proceeds of crime***

Part 5 amends the Proceeds of Crime Act 2002. By virtue of the 2009 Act s 51, receivers from the Crown Prosecution Service and Revenue and Customs Prosecutions Office, along with accredited financial investigators and members of staff of other departments and public bodies, are entitled to deduct their expenses from recovered sums when they are appointed as receivers pursuant to the 2002 Act s 48 or 50. An appropriate officer (as defined) can continue to retain property that has been or may be seized under a specified seizure power if that property is also subject to a restraint order: 2009 Act s 52. Sections 53 and 54 make equivalent provision in relation to Scotland and Northern Ireland. Section 55 provides for search and seizure powers to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. Sections 56 and 57 make equivalent provision in relation to Scotland and Northern Ireland. By virtue of s 58, property that has been seized by an appropriate officer under a relevant seizure power, or which has been produced to such an officer in compliance

with a production order under the 2002 Act s 345, may in certain circumstances be sold to meet a confiscation order. The 2009 Act ss 59 and 60 make comparable provision in relation to Scotland and Northern Ireland. Section 61 adds the Serious Organised Crime Agency to the list of enforcement authorities that are liable to pay compensation to a person whose property has been affected by the enforcement of confiscation legislation. Under s 62, the limitation period for actions for the civil recovery of property obtained through unlawful conduct under the 2002 Act Pt 5 Ch 2 (ss 243-288) is extended from 12 to 20 years. An officer can require the search of a vehicle if he has reasonable grounds for suspecting there is cash in the vehicle which is recoverable property or intended for use in unlawful conduct: 2009 Act s 63. Section 64 provides that the period during which cash seized under the 2002 Act s 294 can be detained may be extended for a period of six months. By virtue of the 2009 Act s 65, law enforcement agencies may forfeit detained cash without a court order in uncontested cases. Section 66 transfers the jurisdiction for applications relating to detained cash investigations from a High Court judge to a judge entitled to exercise the jurisdiction of the Crown Court.

### ***Part 6 (ss 67-78) Extradition***

Part 6 amends the Extradition Act 2003. The 2009 Act ss 67 and 68 ensure that the United Kingdom is in a position to deal with alerts transmitted via the second generation Schengen Information System which request the arrest of a person for extradition purposes. By virtue of ss 69 and 70, an appropriate judge is permitted to adjourn extradition proceedings on the basis of a domestic sentence after a person has been brought before him before the extradition hearing has begun. Section 71 clarifies that, where consideration of an extradition request is deferred in order to allow domestic proceedings to be concluded or a prison sentence to be served, consideration of the extradition request should recommence once the person is released from detention pursuant to any sentence imposed. Provision is made by s 72 for the treatment of persons who are serving a sentence of imprisonment in the United Kingdom, are extradited to a category 1 territory under a European Arrest Warrant, and then return to the United Kingdom. Corresponding provision is made in s 73 for persons who return to the United Kingdom after being extradited to a category 2 territory. Section 74 provides a regime within which the United Kingdom will be able to provide undertakings as to a person's treatment in the United Kingdom and eventual return to a requested territory. The protection afforded by the Extradition Act 2003 s 152 applies where a person is extradited to the United Kingdom from a territory which is neither a category 1 nor a category 2 territory: 2009 Act s 75. Section 76 deals with situations in which the United Kingdom would want to deal with an offence committed by a person previously extradited to the United Kingdom for the purposes of prosecution for a different offence. Under s 77, weekends and certain specified holidays are excluded from the calculation of the 48-hour period during which a person provisionally arrested under the Extradition Act 2003 s 5 must be brought before, and relevant documents provided to, the appropriate judge. The 2009 Act s 78 enables a judge to give a live link direction in hearings before the judge other than the extradition hearing itself and other than any extradition proceedings which postdate surrender.

### ***Part 7 (ss 79, 80) Aviation security***

Section 79 amends the Aviation Security Act 1982 by making provision for the establishment of Risk Advisory Groups and Security Executive Groups at aerodromes. The 2009 Act s 80 gives effect to Sch 6, which makes further amendments to the Aviation Security Act 1982 supplementary to and consequential on the creation of these bodies.

### ***Part 8 (ss 81-111) Miscellaneous***

#### ***Chapter 1 (ss 81-97) Safeguarding vulnerable groups and criminal records***

Section 81 renames the Independent Barring Board as the Independent Safeguarding Authority and makes consequential amendments to various enactments. Sections 82-89 amend the Safeguarding Vulnerable Groups Act 2006. The effect of the 2009 Act s 82 is that a person who is required under the Safeguarding Vulnerable Groups Act 2006 s 13 to make a check on a member of a governing body (a 'governor') of an educational establishment does not commit an offence if the governor fails to consent to the check or fails to provide the appropriate officer with any information necessary to make the check. The 2009 Act s 82 also makes it an offence for a governor to act as a member of a governing body before consenting to the check or providing the appropriate officer with any information required to carry out the check. The Secretary of State is entitled to determine the form, manner and content of the form for applying to become subject to monitoring pursuant to the Safeguarding Vulnerable Groups Act 2006 s 24: 2009 Act s 83. Section 84 makes provision for the payment of a fee by persons who are subject to monitoring and have benefited from a free application to the monitoring scheme as a volunteer, if they subsequently enter paid employment in activities regulated under the Safeguarding Vulnerable Groups Act 2006. The requirements arising from the declaration to be made by persons eligible to receive vetting information under s 30 or information about the cessation of monitoring under s 32 are revised by the 2009 Act ss 85 and 86. Section 87 creates an additional duty and confers a further power on the Independent Safeguarding Authority in circumstances where it proposes to bar an individual from working with children or vulnerable adults. Under s 88, the Independent Safeguarding Authority is empowered to provide information that it holds to the police for use by the police for any of various specified purposes. It is the Independent Safeguarding Authority rather than the Secretary of State that must now be satisfied that a person has met the prescribed criteria for automatic barring before the Authority is required to bar him: s 89. Sections 90-92 make provision in relation to Northern Ireland equivalent to that made by ss 87-89. By virtue of s 93, a copy of a person's criminal conviction certificate is to be sent to an employer where specifically requested. Section 94 amends the Police Act 1997 to provide for 'right to work' information to be recorded on basic, standard and enhanced disclosures where a request for such information is made. The 2009 Act s 95 allows for other methods of identity verification to be prescribed under the Police Act 1997 s 118 when making an application for a criminal conviction certificate. The Criminal Records Bureau is authorised to check the suitability of individuals to be registered to countersign and receive standard and enhanced disclosures against the new barred lists established under the Safeguarding Vulnerable Groups Act 2006: 2009 Act s 96. The Police Act 1997 is amended by the 2009 Act s 97 so that the Secretary of State may determine the form, manner and contents of applications for criminal records disclosures.

#### *Chapter 2 (ss 98-111) Other*

Section 98 amends the Customs and Excise Management Act 1979 by enabling an officer of Revenue and Customs to require a person entering or leaving the United Kingdom to produce his passport or travel documents and answer questions about his journey. The 1979 Act is also amended by the 2009 Act s 99, which clarifies the powers available to officers at the border to ask questions about, and to search for, cash that is recoverable property or is intended by any person for use in unlawful conduct. Section 100 clarifies that the protection from interception afforded to postal communications in the 2000 Act does not restrict Revenue and Customs' powers to check international postal traffic for customs or excise purposes. A prohibition on the importation and exportation of false identity documents is created by the 2009 Act s 101. Section 102 amends the Criminal Justice Act 1988 by empowering the Secretary of State to specify weapons for the purposes of the prohibition on importation. The 2009 Act s 103 amends the Football Spectators Act 1989 so that those subject to banning orders in England and Wales are also banned from attending regulated football matches in Scotland and Northern Ireland. Under the 2009 Act s 104, when an individual is directed to report to police by the court or an enforcing authority, the specified police station may be anywhere in the United Kingdom and thus local to the individual's place of residence. Section 105 deals with the enforcement of the 1989 Act in Scotland and Northern Ireland. The offence of failing to comply with the

requirements of a Scottish banning order or a notice issued by the Scottish Football Banning Orders Authority and the offence of giving false information in connection with an application for an exemption are extended to England and Wales by the 2009 Act s 106. Section 107 adds to the list of relevant offences for the purposes of the 1989 Act Pt 2 (ss 14-22A) (1) failing to comply with a requirement made on initially reporting to the police in respect of an English and Welsh imposed order; and (2) knowingly making false statements in relation to an application for an exemption to the English and Welsh enforcing authority. Under the 2009 Act s 108, every provider of probation services in a particular area whose arrangements under the Offender Management Act 2007 s 3 provide for it to be a responsible authority is to be added to the list of responsible authorities which comprise Crime and Disorder Reduction Partnerships (in England) or Community Safety Partnership (in Wales) in that area. The Serious Organised Crime and Police Act 2005 is amended by the 2009 Act s 109 by the creation of three exceptions to the general rule that employees of the Serious Organised Crime Agency are not servants of the Crown. Section 110 amends the Firearms Act 1968 so that certain provisions of the 1968 Act apply to a member of the Scottish Crime and Drug Enforcement Agency in the same way as they apply to a member of a police force and a member of staff of the Serious Organised Crime Agency. The requirement that a constable who wishes to obtain a warrant under the Misuse of Drugs Act 1971 s 23(3) to enter and search premises must be acting for the police area within which the premises are situated is removed by the 2009 Act s 111.

### ***Part 9 (ss 112-117) General***

Sections 112 and 113 prescribe the order-making power of the Secretary of State for the purposes of the 2009 Act. Section 112 also gives effect to Sch 7, which makes minor and consequential amendments, and Sch 8, which makes various repeals and revocations. Section 114 makes financial provision, s 115 deals with extent, s 116 makes provision for commencement, and s 117 specifies the short title.

### ***Amendments, repeals and revocations***

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that these lists are not exhaustive.

The following Act is repealed in full: Sexual Offences Act 1985.

Specific provisions of a number of Acts are added, amended or repealed. These include: Street Offences Act 1959 s 2; Aviation Security Act 1982 ss 25, 25A, 30; Prosecution of Offences Act 1985 s 22A; Crime and Disorder Act 1998 ss 14, 15, 44; Criminal Justice and Police Act 2001 ss 48, 49; Vehicles (Crime) Act 2001 s 36; Police Reform Act 2002 s 84; Proceeds of Crime Act 2002 s 45; Extradition Act 2003 ss 143, 144, 151; Drugs Act 2005 s 2; Serious Organised Crime and Police Act 2005 s 120; and Serious Crime Act 2007 s 78.

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## **1. INTRODUCTION**

### **(1) THE OFFICE OF CONSTABLE**

#### **101. The common law constable.**

The history of the police is the history of the office of constable and, notwithstanding that present day police forces are the creation of statute and that the police have numerous statutory powers and duties<sup>1</sup>, in essence a police force is neither more nor less than a number of individual constables, whose status derives from the common law, organised together in the interests of efficiency.

From earliest times peace officers under varying titles have been responsible for safeguarding the internal peace of the kingdom<sup>2</sup>, and of these the most important for the purpose of analysing the position of the present day constable is the petty constable, or parish constable as he later became styled with the growth of the civil functions of the parish<sup>3</sup>.

By the beginning of the seventeenth century it could be said that the parish constable was responsible first, by virtue of his office, for the preservation of the peace within his bailiwick<sup>4</sup> and, secondly, for the execution of the orders and warrants of the justices of the peace<sup>5</sup>. It had by then become customary for justices of the peace to swear a constable into his office and after 1662, if a parish failed to elect a constable, the local justices were empowered to appoint one<sup>6</sup>. The constable's oath and his close relationship with the justices of the peace then characterised him as a ministerial officer of the Crown like a sheriff or the justices of the peace themselves rather than as a mere local administrative officer<sup>7</sup>.

Side by side with the parish constable there existed in the towns the town watch<sup>8</sup> on which, in theory, all able bodied inhabitants were, in their turn, liable to serve. Watchmen were not constables but, where both parish constables were appointed and a town watch was established, the watch was set by the constable and the watchmen acted as his assistants. It must be recognised, however, that owing, among other causes, to laxity in observance of the law, watch was far from universally kept in the towns and there was no uniform practice throughout the country<sup>9</sup>.

The office of parish constable was unpaid, onerous and unpopular and the practice grew up of allowing a person nominated to the office to put forward a substitute who was paid by him. These substitutes were the first professional constables, but their quality, never high, steadily deteriorated and the inadequacy of a police system based on an area as small as the parish was aggravated. During the eighteenth century the police system based on the parish constable and the town watch fell into disrepute and by the end of the century, the position having become serious in urban areas, consideration was being given to its replacement<sup>10</sup>. A number of local Acts authorised the appointment in towns of improvement commissioners responsible, among other things, for the provision of police<sup>11</sup>. This approach to the police problem culminated in the passing of an Act in 1847 containing town police clauses for incorporation in local Acts<sup>12</sup> and, in relation to parishes, in the passing of an adoptive Act in 1833 under which inspectors could be appointed with responsibility, among other things, for the establishment of a parish watch consisting of constables<sup>13</sup>. While to some extent this approach to the problem foreshadowed and indeed overlapped that finally adopted in the nineteenth century, it contributed little to the modern concept of the organised police force<sup>14</sup>. Although the system of parish constables was gradually superseded during the nineteenth century by that of the statutory police force, it was itself reformed and regularised by a series of enactments; but in 1872 an Act was passed rendering the general appointment of parish constables unnecessary<sup>15</sup>.

1 See PARA 477 et seq post. Even before the seventeenth century the common law constable had a number of statutory powers and duties: see Lambard's *Duties of Constables* (1610 Edn) 23. As respects police history generally see Critchley *History of Police in England and Wales (900-1966)*.

2 See *Fisher v Oldham Corp'n* [1930] 2 KB 364 at 369 per McCordie J. High constables were appointed for hundreds and had various duties besides general maintenance of the peace: see Lambard's *Duties of Constables* (1610 Edn) 5, 10-34. They were appointed originally by the court of hundred (13 Edw 1 c 6 (Statute of Winchester) (1285) (repealed)) and later usually by quarter sessions; finally, they were appointed by justices

at sessions (County Rates Act 1844 s 8 (repealed)). Provision was made for the discharge by others of the duties of high constable and for the abolition of that office by the High Constables Act 1869 s 2 (repealed), and the office is now extinct.

3 The area for which a petty or parish constable was appointed was not necessarily coterminous with that of a parish: see Lambard's Duties of Constables (1610 Edn) 5-6, 9-10. In 1 Tomlin's Law Dictionary Explaining the Rise, Progress and Present State of the British Law (4th Edn) (1835), it is stated under the heading Constable 'The constable of the vill (or petty constable as he is frequently called...) is he who is generally understood by the term constable where mentioned without any peculiar addition'.

4 He was within the area for which he was appointed.

5 See Lambard's Duties of Constables (1610 Edn) 11-22. The constable was to a considerable extent the executive of the justice of the peace: see 4 Holdsworth's History of English Law (1924 Edn) 124. As to the origin and history of the office of justice of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

6 Poor Relief Act 1662 s 15 (repealed). See 1 Burn's Justice of the Peace (28th Edn) (1837) 825-826, 831-835.

7 *Mackalley's Case* (1611) 9 Co Rep 65b at 68b.

8 The town watch can be traced back to 13 Edw 1 c 6 (Statute of Winchester) (1285) (repealed), which required the establishment of a watch in all walled towns. As regards this institution as it later developed (subject to divergences between theory and practice) see 6 Burn's Justice of the Peace (28th Edn) (1837) 166 et seq.

9 As to the policing of London see Radzinowicz *A History of English Criminal Law and its Administration From 1750* (1956) 26-27, 171-201, 277-284, 492-535.

10 In London some of the justices of the peace (eg the Fielding brothers) organised small bodies of paid whole-time constables of which the Bow Street Runners were one, and at the turn of the century the City of London established a comparable force. Under 32 Geo 3 c 53 (Justices of the Peace, Metropolis) (1792) (repealed), seven police offices (the precursors of the metropolitan magistrates' courts) were established in certain parts of Middlesex and Surrey in or near London each employing not more than six constables. In 1800 a further police office and the Thames Police Force were established under 39 & 40 Geo 3 c 87 (Depredations on the Thames) (1800) (repealed). See further Radzinowicz *A History of English Criminal Law and its Administration From 1750* (1956) 188-194 (police officers), 190, 379-404, 420-422, 529-532 (Thames Police Force), 263-269 (Bow Street Runners). As to the unsatisfactory state of the policing of the metropolis (which was considered by no less than six parliamentary committees of inquiry between 1770 and 1828) see Radzinowicz *A History of English Criminal Law and its Administration From 1750* (1956) 235-306. It should not be assumed that the parish constable system was necessarily inefficient in rural areas where the established pattern of society was undisturbed by industrialisation, crime was essentially local in character and liaison between justice and constable was very close.

11 As to improvement commissioners generally see 4 Webb's History of English Local Government (1906-29) 235 et seq.

12 See the Town Police Clauses Act 1847 ss 6-14 (repealed).

13 See the Lighting and Watching Act 1833 ss 39-43 (repealed).

14 As to the modern police forces see PARA 136 et seq post.

15 See the Parish Constables Act 1872 (repealed).

## UPDATE

### 101 The common law constable

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.



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## **102. The police constable.**

Various enactments were passed in the nineteenth and twentieth centuries providing for the establishment of police forces<sup>1</sup> comprising constables appointed in the manner laid down in the relevant enactment, and the organised police force was thus superimposed on the office of constable<sup>2</sup>. Powers were not conferred on members of police forces as such, but a member of a police force maintained for a police area and every special constable<sup>3</sup> appointed for a police area is, on appointment, attested as a constable by making a declaration<sup>4</sup>, and a member of a police force now has all the powers<sup>5</sup> and privileges of a constable throughout England and Wales<sup>6</sup> and the adjacent United Kingdom waters<sup>7</sup> and not merely within his own area<sup>8</sup>. The authority of a member of a police force arises directly from his attestation and his status is derived from that of the common law constable.

Of present day constables, the member of a police force is the most important<sup>9</sup>.

Women were first appointed members of police forces during the 1914-18 war<sup>10</sup>.

Irrespective of his place of birth, a person of any nationality may be a member of a police force<sup>11</sup> maintained for any police area<sup>12</sup> in England and Wales<sup>13</sup> and, accordingly, irrespective of his place of birth such a person may be attested or appointed, and hold office, as a constable<sup>14</sup>.

1 See PARA 106 et seq post.

2 As to the power of appointing members of police forces see PARAS 179-187, 192 post.

3 As to special constables see PARAS 108-122 post.

4 See the Police Act 1996 s 29, Sch 4 (s 29 as amended, Sch 4 as substituted); and PARA 103 post.

5 'Powers' includes powers under any enactment, whenever passed or made: *ibid* s 30(5). 'Enactment' does not include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament: Interpretation Act 1978 s 5, Sch 1. As to the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 'England' means, subject to any alteration of boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24), Greater London and the Isles of Scilly: Interpretation Act 1978 s 5, Sch 1. 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as originally enacted) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (as amended) (consequential alteration of boundary following alteration of watercourse) (see LOCAL GOVERNMENT vol 69 (2009) PARA 90): Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9). As to local government areas see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; and as to boundary changes see LOCAL GOVERNMENT vol 69 (2009) PARA 56 et seq. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

7 The Police Act 1996 s 30 (as amended), so far as it relates to powers under any enactment, makes them exercisable throughout the United Kingdom waters whether or not the enactment applies to those waters: s 30(5). 'United Kingdom waters' means the sea and other waters within the seaward limits of the territorial sea: s 30(5). As to the extent of the territorial sea (or waters) of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31.

'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

8 See the Police Act 1996 s 30(1). This provision is without prejudice to the powers of the police to give cross-border aid (see s 98 (as amended); and PARA 429 post), the special protection jurisdiction of metropolitan police officers (see s 99; and PARA 429 post), and any other enactment conferring powers on constables for particular purposes: s 30(6).

9 As to the appointment and terms of service of members of police forces see PARA 232 et seq post. As to the other bodies of constables see PARAS 119-135 post. As to the extent of the jurisdiction of police officers see PARA 477 post. A few forces had members, duly attested, not serving regularly but available for full-time service in times of emergency; such members constitute the (now almost defunct) first police reserve of the force and there are special provisions governing their emoluments and pensions: see the Police Pensions Regulations 1987, SI 1987/257, reg F4(4), Sch A.

10 As to the treatment of police officers in relation to the law relating to discrimination see PARA 105 post. See also PARA 405 post.

11 'Police force' means a force maintained by a police authority: Police Act 1996 s 101(1). This definition is applied to any other Act, unless the contrary intention appears: see the Interpretation Act 1978 s 5, Sch 1 (amended by the Police Act 1996 s 103, Sch 7 para 32). For the meaning of 'police authority' see PARA 139 note 1 post.

12 For the meaning of 'police area' see PARA 136 note 2 post.

13 Police Reform Act 2002 s 82(1)(a). Irrespective of his place of birth, a person may also be a member of the British Transport Police Force (see PARA 129 post) (s 82(1)(d)); a member of the Civil Nuclear Constabulary (see PARA 128 post) (s 82(1)(e) (substituted by the Energy Act 2004 s 69(1), Sch 14 para 11(a); and amended by the Serious Organised Crime and Police Act 2005 s 161(5), Sch 13 paras 11, 12(1), (2)(a))); or a special constable (Police Reform Act 2002 s 82(1)(g)).

14 Ibid s 82(1). Section 82(1) (as amended) is subject to any provision falling within s 82(3) (as amended) which relates to qualification for appointment as a constable or as a special constable or for membership of, or for particular ranks, offices or positions with any force or constabulary: s 82(2) (amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 179, 185(1), (3)(a), (b), Sch 17 Pt 2). The provisions falling within the Police Reform Act 2002 s 82(3) (as amended) are: (1) provision made by regulations made under the Police Act 1996 s 50 (as amended) (see PARA 228 post) or s 51 (as amended) (see PARA 110 post) (regulations for police constables and for special constables) (Police Reform Act 2002 s 82(3)(a)); and (2) provision given effect to by any arrangements made for the purpose of regulating appointment to membership of the British Transport Police Force, or the Civil Nuclear Constabulary, or to particular ranks or positions with that force or constabulary (s 82(3)(e) (amended by the Serious Organised Crime and Police Act 2005 Sch 13 paras 11, 12(1), (3)). Without prejudice to the generality of any power conferred apart from the Police Reform Act 2002 s 82 (as amended), the provision falling within s 82(3) (as amended) that may be made by any such regulations or arrangements as are mentioned in s 82(3) (as amended) may include provision imposing any of the following requirements:

- 1 (a) requirements with respect to the competence in written and spoken English of candidates for appointment (s 82(4)(a));
- 2 (b) requirements with respect to the immigration status of such candidates (s 82(4)(b));
- 3 (c) requirements with respect to nationality in the case of particular ranks, offices or positions (s 82(4)(c)),

and, in a case where the power to make provision with respect to qualification for appointment as a constable or as a special constable, or for membership of a force, is exercisable by any such regulations as are mentioned in s 82(3) (as amended), the regulations made must impose requirements with respect to all the matters mentioned in heads (a) and (b) supra (s 82(4)).

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### 103. Attestation as a constable.

The hallmark of the present day constable remains, as in the seventeenth century, his attestation. Every member of a police force<sup>1</sup> maintained for a police area<sup>2</sup> and every special constable<sup>3</sup> appointed for such an area must, on appointment, be attested as a constable by making the appropriate declaration<sup>4</sup> before a justice of the peace having jurisdiction within the police area<sup>5</sup>. Until he is so attested, a person has not the authority or status of a constable and, when so attested, he holds the office of constable<sup>6</sup>. This applies equally to members of police forces and special constables<sup>7</sup>.

1 For the meaning of 'police force' see PARA 102 note 11 ante.

2 For the meaning of 'police area' see PARA 136 note 2 post.

3 As to special constables see PARAS 108-122 post.

4 Police Act 1996 s 29. The form of declaration is as follows: 'I . . . . of . . . . do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law': s 29, Sch 4 (substituted by the Police Reform Act 2002 s 83). For the form of the declaration in Welsh, which may be used in police areas in Wales as an alternative to that in the Police Act 1996 Sch 4 (as substituted), see the Attestation of Constables (Welsh Language) Order 2002, SI 2002/2312. As to fundamental human rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 101 et seq. As to the preservation of the Queen's peace see PARA 477 et seq post. As to offences against people and property see CRIMINAL LAW EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 85 et seq.

Until 1868 constables were sworn in, but by the Promissory Oaths Act 1868 a declaration was substituted for an oath: see s 12(4), (5); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 926.

5 Police Act 1996 s 29(b) (amended by the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 83(b), Sch 34 Pt VII). As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

6 See *Sheikh v Chief Constable of Greater Manchester Police* [1990] 1 QB 637, [1989] 2 All ER 684, CA.

7 See *Sheikh v Chief Constable of Greater Manchester Police* [1990] 1 QB 637, [1989] 2 All ER 684, CA.

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#### **104. The status of the police constable.**

A member of a police force, of whatever rank, when carrying out his duties as a constable acts as an officer of the Crown and a public servant<sup>1</sup>. His powers, whether conferred by common law or statute, are exercised by him by virtue of his office, and unless he is acting in execution of a warrant lawfully issued can only be exercised on his own responsibility<sup>2</sup>.

A police constable who deliberately fails to carry out his duties by wilfully omitting to take steps to preserve the Queen's peace or protect a person under attack or arrest his assailant commits the common law offence of misconduct in public office<sup>3</sup>. If a police constable exercises his powers as a public officer causing loss to the claimant where he either intends to injure the claimant or knows that he has no power to do the act complained of and that the act will probably injure the claimant he may be liable for the independent tort of misfeasance in public office<sup>4</sup>.

1 See *Mackalley's Case* (1611) 9 Co Rep 65b at 68b; *Lewis v Cattle* [1938] 2 KB 454, [1938] 2 All ER 368, DC. See also *Coomber v Justices of the County of Berks* (1883) 9 App Cas 61 at 67, HL; *Fisher v Oldham Corp'n* [1930] 2 KB 364 at 369-371 per McCardie J; *A-G for New South Wales v Perpetual Trustee Co Ltd* [1955] AC 457, [1955] 1 All ER 846, PC; *R v Rasool* [1997] 4 All ER 439, [1997] 1 WLR 1092, CA. As to the restrictions on the application of employment protection legislation to police officers see EMPLOYMENT vol 39 (2009) PARA 141. As to the application of discrimination legislation see PARA 405 post.

2 See *Enever v R* (1906) 3 CLR 969 at 977, Aust HC. As to the protection accorded by acting in obedience to a warrant see the Constables Protection Act 1750 s 6; and PARA 523 post.

3 See *R v Dytham* [1979] QB 722, [1979] 3 All ER 641, CA. As to misconduct in public office see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196; CRIMINAL LAW EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 536-539. A sentencing judge is entitled to pass a deterrent sentence to mark an offender's betrayal of the standards to be expected of a police officer: *A-G's Reference (No 1 of 2007)*, *R v Hardy* [2007] All ER (D) 102 (Mar). See also *R v Kassim* [2005] EWCA Crim 1020, [2006] 1 Cr App Rep (S) 12, [2005] All ER (D) 155 (Apr). As to the code of conduct for police officers see PARA 246 post.

4 See eg *Ashley v Chief Constable of Sussex Police* [2006] EWCA Civ 1085, [2006] All ER (D) 406 (Jul). As to misfeasance in public office generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 188; TORT vol 45(2) (Reissue) PARA 844. The general immunity of witnesses from civil action by reason of their being a witness in court proceedings does not extend to things done by police officers during the investigative process which could not fairly be said to form part of their participation in the judicial process as witnesses; and, in particular, the immunity does not extend to cover the fabrication of false evidence: *Darker (as personal representative of Docker, deceased) v Chief Constable of the West Midlands Police* [2001] 1 AC 435, [2000] 4 All ER 193, HL. See further CIVIL PROCEDURE vol 11 (2009) PARA 978.

## UPDATE

### 104 The status of the police constable

NOTE 3--See also *A-G's Reference No 68 of 2009*; *R v Turner* [2009] All ER (D) 147 (Oct), CA.

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### 105. Liability for wrongful acts of constables.

The Crown is not liable for the wrongful acts of a member of a police force, for whereas a constable is an officer of the Crown and a public servant<sup>1</sup>, his relationship with the Crown is not that of master and servant or principal and agent and, if he is called a servant, it is in the sense in which any holder of a public office may be called a servant of the Crown or of the state<sup>2</sup>.

The relationship of the police authority<sup>3</sup> and an individual member of a police force is not that of employer and employee<sup>4</sup> nor that of principal and agent<sup>5</sup>. Where a member of a police force is injured by the wrongful act of a third person, the police authority may not sue for the loss of the member's services<sup>6</sup>.

However, the chief officer of police<sup>7</sup> for a police area<sup>8</sup> is liable in respect of any unlawful conduct of constables<sup>9</sup> under his direction and control<sup>10</sup> in the performance or purported performance of their functions<sup>11</sup> in like manner as a master is liable in respect of any unlawful conduct of his servants in the course of their employment<sup>12</sup>, and accordingly is, in the case of a tort, treated for all purposes as a joint tortfeasor<sup>13</sup>. Any damages or costs awarded against the chief officer of police in any proceedings brought against him by virtue of this provision and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings<sup>14</sup>, and any sum required in connection with the settlement of any claim made against the chief officer of police by virtue of this provision, if the settlement is approved by the police authority<sup>15</sup>, are to be paid out of the police fund<sup>16</sup>.

A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund<sup>17</sup>:

- 1 (1) any damages or costs awarded against:
  - 1 (a) a member of the police force maintained by the police authority<sup>18</sup>;
  - 2 (b) a constable for the time being required to serve<sup>19</sup> with that force<sup>20</sup>; or

3. (c) a special constable appointed for the authority's police area<sup>21</sup>,  
  - 2 in proceedings for any unlawful conduct of that person<sup>22</sup>;
  - 3 (2) any costs incurred and not recovered by such a person in such proceedings<sup>23</sup>;  
and
  - 4 (3) any sum required in connection with the settlement of a claim that has or  
might have given rise to such proceedings<sup>24</sup>.

For the purposes of the statutory provisions relating to discrimination on grounds of sex<sup>25</sup>, race<sup>26</sup>, disability<sup>27</sup>, age<sup>28</sup>, sexual orientation<sup>29</sup>, or religion or belief<sup>30</sup>, in the field of employment, the holding of the office of constable (whether or not as a member of a police force) is treated as employment by the chief officer of police or, as the case may be, the police authority as respects any act done by the chief officer or the authority in relation to a constable or that office<sup>31</sup>.

For the purposes of the provisions of the discrimination legislation<sup>32</sup> by which an employer or principal is liable for the acts of his employees or agents, as the case may be, the holding of the office of constable is treated as employment by the chief officer of police (and as not being employment by any other person) and anything done by a person holding such an office in the performance, or purported performance, of his functions is to be treated as done in the course of that employment<sup>33</sup>.

Any compensation, costs or expenses awarded against a chief officer of police in proceedings brought against him under the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Equality Act 2006, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006 or the Equality Act (Sexual Orientation) Regulations 2003 and 2007 and the chief officer's own unrecovered costs or expenses in such proceedings, and any sums required by the chief officer for the settlement of a claim under those provisions which has the approval of his police authority, are to be paid out of the police fund<sup>34</sup>. A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund any compensation, costs or expenses awarded in proceedings under those provisions against a person under the direction and control of the chief officer of police; any costs or expenses incurred and not recovered by such a person in such proceedings; and any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings<sup>35</sup>.

1 See PARA 104 ante.

2 See *A-G for New South Wales v Perpetual Trustee Co Ltd* [1955] AC 457 at 480-481, 490, [1955] 1 All ER 846 at 852, 858, PC. See also the Crown Proceedings Act 1947 s 2(5), (6) (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 383. See, however, the Firearms Act 1968 s 54(3) (as substituted and amended), s 54(3AA) (as added) (where a member of a police force or a member of the Civil Nuclear Constabulary is deemed to be in the service of Her Majesty); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 634.

3 As to police authorities see PARA 139 et seq post.

4 See *Fisher v Oldham Corpn* [1930] 2 KB 364 at 371 per McCardie J; *Rodwell v Minister of Health* [1947] KB 404 at 413-414, [1947] 1 All ER 80 at 83 per Morris J; *Metropolitan Police District Receiver v Croydon Corpn, Monmouthshire County Council v Smith* [1957] 2 QB 154, [1957] 1 All ER 78, CA. As to the application of the Employment Rights Act 1996 to police officers see EMPLOYMENT vol 39 (2009) PARA 141. As to the application to the police of the legislation relating to health and safety see PARA 406 post.

5 See *Farah v Metropolitan Police Comr* [1998] QB 65, [1997] 1 All ER 289, CA; but see *Hawkins v Bepey* [1980] 1 All ER 797, [1980] 1 WLR 419.

6 *A-G for New South Wales v Perpetual Trustee Co Ltd* [1955] AC 457, [1955] 1 All ER 846, PC. See also *Metropolitan Police District Receiver v Croydon Corpn, Monmouthshire County Council v Smith* [1957] 2 QB 154, [1957] 1 All ER 78, CA.

7 'Chief officer of police' means: (1) in relation to a police force maintained under the Police Act 1996 s 2 (see PARA 136 post), the chief constable; (2) in relation to the metropolitan police force, the Metropolitan Police Commissioner; and (3) in relation to the City of London police force, the City of London Police Commissioner: s 101(1). This definition is applied to any other Act, unless the contrary intention appears: see the Interpretation Act 1978 s 5, Sch 1 (amended by the Police Act 1996 s 103, Sch 7 para 32). For the meaning of 'police force' see PARA 102 note 11 ante. As to chief constables see PARA 178 et seq post. As to the metropolitan police district see PARA 137 post; and as to the Metropolitan Police Commissioner see PARA 183 post. As to the City of London police force see PARA 138 post; and as to the City of London Police Commissioner see PARA 187 post.

8 For the meaning of 'police area' see PARA 136 note 2 post.

9 As to duties of care owed by constables see PARA 479 post.

10 As to the Secretary of State's liability in respect of the unlawful conduct of members of a police force engaged on temporary service outside their force see the Police Act 1996 s 97(9) (as amended); and PARA 428 post.

11 To establish liability the claimant has to show that the wrong he alleges was committed at a time when the police officer was apparently acting in his capacity as a constable. A constable may be so acting even though he was not on duty at the time when the alleged act occurred: *Weir v Bettison (sued as Chief Constable of Merseyside Police)* [2003] EWCA Civ 111, [2003] ICR 708, [2003] All ER (D) 273 (Jan). Cf *N v Chief Constable of Merseyside Police* [2006] EWHC 3041 (QB), [2006] All ER (D) 421 (Nov). As a matter of public policy the police are immune from actions for negligence in respect of their activities in the investigation and suppression of crime: *Hill v Chief Constable of West Yorkshire* [1989] AC 53, [1988] 2 All ER 238, HL. There may, however, be exceptional cases in which this exemption may not apply: see *Brooks v Metropolitan Police Comr* [2005] UKHL 24, [2005] 2 All ER 489, [2005] NLJR 653.

12 As to such liability see TORT vol 45(2) (Reissue) PARA 329. See also *Costello v Chief Constable of the Northumbria Police* [1999] 1 All ER 550, [1999] ICR 752, sub nom *Chief Constable of Northumbria v Costello* [1998] NLJR 1880, CA.

13 Police Act 1996 s 88(1) (amended by the Police Reform Act 2002 s 102(1)(a), (b), (2)(a)). As to joint tortfeasors see TORT vol 45(2) (Reissue) PARA 683. Any proceedings in respect of a claim made by virtue of the Police Act 1996 s 88 (as amended) must be brought against the chief officer of police for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of the chief officer of police: s 88(3). See *Donnelly v Chief Constable of Lincolnshire* [2000] All ER (D) 1062; *Donnelly v Chief Constable of Lincolnshire* (14 September 2001, unreported). An award of exemplary damages may be made against a chief officer held liable pursuant to the Police Act 1996 s 88 (as amended): see *Rowlands v Chief Constable of Merseyside Police* [2006] EWCA Civ 1773, [2006] All ER (D) 298 (Dec). As to exemplary damages see DAMAGES vol 12(1) (Reissue) PARAS 811, 1115 et seq.

The Police Act 1996 s 88(1) (as amended) does not apply to any liability by virtue of the Health and Safety at Work Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK): s 51A(2D), (2E)(b) (s 51A added by the Police (Health and Safety) Act 1997 s 1; and the Health and Safety at Work Act 1974 s 51A(2D), (2E) added by the Serious Organised Crime and Police Act 2005 s 158(1)).

The Police Act 1996 s 88 (as amended) has effect where, by virtue of the Serious Organised Crime and Police Act 2005 s 23 or s 24 (see PARAS 455-456 post), a member of the staff of the Serious Organised Crime Agency who is neither a constable nor an employee of the police authority is provided to a police force as if: (1) any unlawful conduct of his in the performance or purported performance of his functions were unlawful conduct of a constable under the direction and control of the chief officer of police of that force; and (2) the Police Act 1996 s 88(4) (as amended) (see the text to notes 17-24 infra) applied to him in the case of the police authority maintaining that force: s 88(5A) (added by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 68, 80(1), (3)). The Police Act 1996 s 88 (as amended) also has effect where an international joint investigation team has been formed under the leadership of a constable who is a member of a police force as if: (a) any unlawful conduct, in the performance or purported performance of his functions as such, of any member of that team who is neither a constable nor an employee of the police authority were unlawful conduct of a constable under the direction and control of the chief officer of police of that force; and (b) s 88(4) (as amended) applied, in the case of the police authority maintaining that force, to every member of that team to whom it would not apply apart from this provision: s 88(6) (s 88(6)-(8) added by the Police Reform Act 2002 s 103(1)). For the meaning of 'police authority' see PARA 139 note 1 post. 'International joint investigation team' means any investigation team formed in accordance with: (i) any framework decision on joint investigation teams adopted under the Treaty on European Union signed at Maastricht on 7 February 1992 (Cm 1934) art 34; (ii) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Protocol to that Convention, established in accordance with that article of that Treaty; or (iii) any international agreement to which the United Kingdom is a party and which is specified for the purposes of the Police Act 1996 s 88 (as amended) in an order made by the Secretary of State: Police Act 1996 s 88(7) (as so added). A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of

either House of Parliament: s 88(8) (as so added). The Convention implementing the Schengen Agreement of 14 June 1985 is specified for these purposes: International Joint Investigation Teams (International Agreement) Order 2004, SI 2004/1127, art 2(a). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

14 Police Act 1996 s 88(2)(a).

15 Ibid s 88(2)(b).

16 Police Act 1996 s 88(2). For the meaning of 'police fund' see PARA 167 note 3 post.

17 Ibid s 88(4). See also *R v DPP, ex p Duckenfield* [1999] 2 All ER 873.

18 Police Act 1996 s 88(5)(a).

19 Ie required to serve by virtue of ibid s 24 (as amended) (see PARA 231 post) or s 98 (as amended) (see PARA 429 post).

20 Ibid s 88(5)(b) (amended by the Police Act 1997 s 134(1), Sch 9 para 85; and the Serious Organised Crime and Police Act 2005 s 174(2), Sch 4 paras 68, 80(1), (2), Sch 17 Pt 2).

21 Police Act 1996 s 88(5)(c). As to special constables see PARAS 108-112 post.

22 Ibid s 88(4)(a) (amended by the Police Reform Act 2002 s 102(4), (5)(a)).

23 Police Act 1996 s 88(4)(b).

24 Ibid s 88(4)(c).

25 Ie the Sex Discrimination Act 1975 Pt II (ss 6-20A) (as amended): see DISCRIMINATION.

26 Ie the Race Relations Act 1976 Pt II (ss 4-16) (as amended): see DISCRIMINATION.

27 Ie the Disability Discrimination Act 1995 Pt II (ss 3A-18E) (as amended): see DISCRIMINATION.

28 Ie the Employment Equality (Age) Regulations 2006, SI 2006/1031, Pt 2 (regs 7-24): see DISCRIMINATION.

29 Ie the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, Pt 2 (regs 6-21) (as amended): see DISCRIMINATION.

30 Ie the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, Pt 2 (regs 6-21) (as amended): see DISCRIMINATION.

31 See the Sex Discrimination Act 1975 s 17(1) (amended by the Sex Discrimination Act 1975 (Amendment) Regulations 2003, SI 2003/1657, reg 2(1), (2)); the Race Relations Act 1976 s 76A(1), (2) (s 76A added by the Race Relations (Amendment) Act 2000 s 4); the Disability Discrimination Act 1995 s 64A(1) (s 64A added by the Disability Discrimination Act 1995 (Amendment) Regulations 2003, SI 2003/1673, regs 3(1), 25); the Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 13(1); the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 11(1) (amended by SI 2006/594); and the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 11(1) (amended by SI 2006/594). A police cadet is similarly treated: Sex Discrimination Act 1975 s 17(6); Race Relations Act 1976 s 76A(1) (as so added); Disability Discrimination Act 1995 s 64A(6) (as so added); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 13(6); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 11(6); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 11(6). As to police cadets see PARA 113 et seq post. See also PARA 405 post.

32 Ie the Sex Discrimination Act 1975 s 41; the Race Relations Act 1976 s 32; the Disability Discrimination Act 1995 s 58; the Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 25; the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 22; the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 22; the Equality Act 2006 s 74; and the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 30: see DISCRIMINATION.

33 See the Sex Discrimination Act 1975 s 17(1A) (added by the Sex Discrimination Act 1975 (Amendment) Regulations 2003, SI 2003/1657, reg 2(1), (3)); the Race Relations Act 1976 s 76A(3) (as added: see note 30 supra); the Disability Discrimination Act 1995 s 64A(2) (as added: see note 30 supra); the Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 13(2); the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 11(2) (amended by SI 2006/594); the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 11(2) (amended by SI 2006/594); the Equality Act 2006 s 75(2); and the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 31(2).

34 See the Sex Discrimination Act 1975 s 17(4); the Race Relations Act 1976 s 76A(4) (as added: see note 30 supra); the Disability Discrimination Act 1995 s 64A(3) (as added (see note 30 supra); and amended by the Disability Discrimination Act 2005 s 4(1), (2)); the Equality Act 2006 s 75(3); the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 11(3); the Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 13(3); the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 11(3); and the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 31(3). Any proceedings which would lie against a chief officer of police must be brought against the chief officer of police for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in the Sex Discrimination Act 1975 s 17(4), the Race Relations Act 1976 s 76A(4) (as added), the Disability Discrimination Act 1995 s 64A(3) (as added and amended), the Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 13(3), the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 11(3), or the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 11(3), to the chief officer of police must be construed accordingly: see the Sex Discrimination Act 1975 s 17(5) (amended by the Equality Act 2006 s 83(2)); the Race Relations Act 1976 s 76A(5) (as so added); the Disability Discrimination Act 1995 s 64A(4) (as so added); the Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 13(4); the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 11(4); and the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 11(4).

35 See the Sex Discrimination Act 1975 s 17(5A) (added by the Sex Discrimination Act 1975 (Amendment) Regulations 2003, SI 2003/1657, reg 2(1), (4)); the Race Relations Act 1976 s 76A(6) (as added: see note 30 supra); the Disability Discrimination Act 1995 s 64A(5) (as added (see note 30 supra); and amended by the Disability Discrimination Act 2005 s 4(1), (2)); the Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 13(5); the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 11(5); the Equality Act 2006 s 75(4); the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 11(5); and the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 31(4).

## UPDATE

### 105 Liability for wrongful acts of constables

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 11--See *Desmond v Chief Constable of Nottinghamshire Police* [2009] EWHC 2362 (QB), [2009] All ER (D) 16 (Oct) (police authority might assume responsibility to person about whom it collated information for inclusion in enhanced criminal record certificate).

NOTE 13--See also the International Joint Investigation Teams (International Agreement) Order 2009, SI 2009/3269.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/(2) DEVELOPMENT OF THE LAW GOVERNING POLICE FORCES/106. Police forces in London.

## (2) DEVELOPMENT OF THE LAW GOVERNING POLICE FORCES

### 106. Police forces in London.

In London, police forces were established for the metropolitan police district<sup>1</sup> in 1829<sup>2</sup> and for the City of London in 1839<sup>3</sup>. Command of the metropolitan police force was originally entrusted to two commissioners of police who were ex officio justices of the peace<sup>4</sup>; but subsequently the number of commissioners was reduced to one who is styled the Metropolitan Police Commissioner<sup>5</sup> (and is no longer an ex officio justice of the peace<sup>6</sup>), and provision was made for the appointment of assistant police commissioners (originally two, later increased to five but now unrestricted as to number)<sup>7</sup>. Command of the City of London police force was entrusted to a commissioner<sup>8</sup>.



- 1 As to the metropolitan police district see PARA 137 post.
- 2 See the Metropolitan Police Act 1829 (repealed). As to the earlier efforts to police the metropolis see PARA 101 ante.
- 3 See the City of London Police Act 1839. As to the City of London police authority see PARA 138 post.
- 4 See the Metropolitan Police Act 1829 s 1 (repealed); the Justices of the Peace Act 1906 s 5(2), Schedule (repealed); the Justices of the Peace Act 1968 s 8(2), Sch 5 Pt I (repealed); and the Administration of Justice Act 1973 ss 1(9), 5, 19(1), 20, Sch 1 para 10(1), Sch 5 Pt II.
- 5 See the Metropolitan Police Act 1856 ss 1, 7 (both repealed). As to the Metropolitan Police Commissioner see PARA 183 post.
- 6 Administration of Justice Act 1973 s 1(9).
- 7 See the Metropolitan Police Act 1856 s 2 (repealed); the Metropolitan Police Act 1933 s 1 (repealed); the Administration of Justice Act 1964 s 39(2), Sch 3 para 7 (repealed); and the Justices of the Peace Act 1968 Sch 5 Pt I (repealed). As to assistant metropolitan police commissioners see PARA 186 post.
- 8 See the City of London Police Act 1839 s 3 (as amended); and PARA 187 post. As to the City of London Police Commissioner see PARA 187 post.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/(2) DEVELOPMENT OF THE LAW GOVERNING POLICE FORCES/107. Police forces outside London.

### **107. Police forces outside London.**

So far as boroughs outside London were concerned, the Municipal Corporations Act 1835<sup>1</sup> and the Municipal Corporations Act 1882<sup>2</sup> required the appointment of watch committees in boroughs to which those Acts applied. These watch committees had to establish police forces. In other towns and populous places to which those Acts did not apply, local Acts commonly empowered, but did not require, the commissioners or trustees appointed for improving and regulating the area to establish police forces<sup>3</sup>. After 1835 there was a gradual reduction in the number of small borough police forces, until eventually only county boroughs and a few non-county boroughs were entitled to have separate police forces<sup>4</sup>. This culminated with their restriction, in general, to county boroughs<sup>5</sup>. With the abolition of county boroughs effected by the Local Government Act 1972<sup>6</sup>, borough police forces ceased to exist.

In relation to counties, the County Police Act 1839<sup>7</sup> empowered, but did not require, justices in quarter sessions to establish a police force either for the whole county or for any division of it. The County and Borough Police Act 1856, however, required the justices to establish a police force for the whole of each county<sup>8</sup>. The Police Act 1964 required every county or county borough to maintain a police force, the police authority being the police committee of the county council<sup>9</sup>. However, not every county had a separate force, as some police forces were amalgamated under that Act and were superseded by combined police forces<sup>10</sup>. There were difficulties associated with defining the areas for which police forces would be responsible as changes to local authority boundaries brought with them the necessity to make changes to police force areas<sup>11</sup>.

England and Wales were divided into police areas including the City of London and the metropolitan police district in 1965<sup>12</sup>. A police authority was established for each police area outside London<sup>13</sup>, and the Metropolitan Police Authority was established in 2000<sup>14</sup>. There is provision for the Secretary of State<sup>15</sup> by order to make alterations in police areas in England and Wales other than the City of London police area<sup>16</sup>.

- 1 See the Municipal Corporations Act 1835 ss 76, 77 (repealed).
- 2 See the Municipal Corporations Act 1882 ss 190, 191 (repealed).
- 3 The provisions usually contained in Acts for regulating the police in towns were consolidated in the Town Police Clauses Act 1847: see PARA 101 ante.
- 4 See eg the County Police Act 1839 s 25 (repealed); and the County and Borough Police Act 1856 ss 18, 19 (repealed).
- 5 See the Police Act 1946 s 1 (repealed).
- 6 See the Local Government Act 1972 s 1(10); and LOCAL GOVERNMENT vol 69 (2009) PARA 5.
- 7 See the County Police Act 1839 s 1 (repealed).
- 8 See the County and Borough Police Act 1856 ss 1-3 (repealed). The Local Government Act 1888 s 9 (repealed) substituted the standing joint committee for quarter sessions as the police authority.
- 9 See the Police Act 1964 s 2(1) (repealed).
- 10 See the Police Act 1964 s 21 (repealed).
- 11 As to local government reorganisation under the Local Government Act 1972 see LOCAL GOVERNMENT vol 69 (2009) PARA 5 et seq. As to subsequent boundary changes see LOCAL GOVERNMENT vol 69 (2009) PARA 56 et seq.
- 12 See the Police Act 1964 s 1 (repealed); the Police Act 1996 s 1 (as amended); and PARA 136 post.
- 13 As to police areas see PARA 136 et seq post.
- 14 See the Police Act 1996 s 5B (as added); and PARA 137 post.
- 15 In any enactment, 'Secretary of State' means one of Her Majesty's principal secretaries of state: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.
- 16 See the Police Act 1996 s 32(1); and PARA 197 post.

## **UPDATE**

### **107 Police forces outside London**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (3) THE SPECIAL CONSTABULARY/(i) The Appointment of Special Constables/108. Statutory origins.

## **(3) THE SPECIAL CONSTABULARY**

### **(i) The Appointment of Special Constables**

#### **108. Statutory origins.**

Nineteenth century legislation provided not only for the establishment of police forces, but also for the appointment of special constables<sup>1</sup>. The constables so appointed became known as 'the

special constabulary', which affords in effect in any particular police area a reserve of unpaid constables who are available for part-time service<sup>2</sup>.

1 See the Special Constables Act 1831 (repealed); and the Municipal Corporations Act 1882 s 196 (repealed). As to special constables appointed under other powers see PARAS 119-135 post.

2 Although a special constable normally gives part-time service, there is not, and never has been, any statutory provision in this regard, and in the 1939-45 war there were in fact full-time paid special constables.

As to the remuneration of present day special constables see PARA 111 post.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (3) THE SPECIAL CONSTABULARY/(i) The Appointment of Special Constables/109. The modern special constabulary.

### **109. The modern special constabulary.**

The chief officer of police<sup>1</sup> of the police force<sup>2</sup> maintained for a police area<sup>3</sup> may<sup>4</sup> appoint special constables for that area<sup>5</sup>. All special constables appointed for a police area are under the direction and control of, and subject to dismissal by, the chief officer of police<sup>6</sup>, and every special constable so appointed must be attested in the same manner as other constables<sup>7</sup>. A special constable has all the powers<sup>8</sup> and privileges of a constable throughout England and Wales and the adjacent United Kingdom waters<sup>9</sup>. A chief officer of police has the same statutory vicarious liability for any unlawful conduct of special constables under his direction and control as he has in the case of members of his force<sup>10</sup>.

To assault, resist or wilfully obstruct or impersonate a special constable or to cause disaffection among special constables is as much an offence as in relation to a member or members of a police force<sup>11</sup>.

A special constable holds the office of constable and for the purposes of the statutory provisions relating to protection from discrimination is in the same position as other constables<sup>12</sup>.

A person who, otherwise than under a contract of employment, holds the office of special constable is treated as an employee of the chief officer of police for the purposes of Part I of the Health and Safety at Work etc Act 1974<sup>13</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 For the meaning of 'police area' see PARA 136 note 2 post.

4 The chief officer of police must exercise his powers in accordance with regulations under the Police Act 1996 s 51 (as amended) (see PARA 110 post): see s 27(1).

5 Ibid s 27(1).

6 Ibid s 27(2). This provision is expressed to be subject to s 24(3) (as amended) (see PARA 231 post) and regulations under s 51 (as amended) (see PARA 110 post).

7 See ibid s 29; and PARA 103 ante.

8 For the meaning of 'powers' see PARA 102 note 5 ante.

9 Police Act 1996 s 30(2) (substituted by the Police and Justice Act 2006 s 2, Sch 2 para 21(1), (2)). For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante. For the meaning of 'United Kingdom waters' see PARA 102 note 7 ante.

10 See the Police Act 1996 s 88 (as amended); and PARA 105 ante.

11 As to assault see *ibid* s 89 (as amended); as to impersonation see s 90 (as amended); and as to disaffection see s 91. See further PARA 481 post.

12 See PARA 105 ante. See also *Sheikh v Chief Constable of Greater Manchester Police* [1990] 1 QB 637, [1989] 2 All ER 684, CA.

13 See the Health and Safety at Work etc Act 1974 s 51A(1), (2) (as added); and PARA 406 post. As to the right of special constables not to suffer detriment or to be dismissed on certain grounds relating to health and safety see PARA 406 post.

## UPDATE

### 109 The modern special constabulary

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (3) THE SPECIAL CONSTABULARY/ (ii) Government, Administration and Conditions of Service/110. Power to make regulations for special constables.

## (ii) Government, Administration and Conditions of Service

### 110. Power to make regulations for special constables.

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> as to the government, administration and conditions of service of special constables<sup>3</sup>. The regulations may make provision with respect to:

- 5 (1) the qualifications for appointment of special constables<sup>4</sup>;
- 6 (2) the retirement of special constables<sup>5</sup>;
- 7 (3) the conduct of special constables and the maintenance of discipline<sup>6</sup>;
- 8 (4) the suspension of special constables from their office as constable<sup>7</sup>;
- 9 (5) the allowances payable to special constables<sup>8</sup>; and
- 10 (6) the application to special constables, subject to such modifications as may be prescribed by the regulations, of any provisions made by or under any enactment<sup>9</sup> relating to the pensions payable to or in respect of members of police forces<sup>10</sup>.

In relation to any matter as to which provision may be made by such regulations, the regulations may: (a) authorise or require provision to be made by, or confer discretionary powers on, the Secretary of State, police authorities<sup>11</sup>, chief officers of police<sup>12</sup> or other persons<sup>13</sup>; or (b) authorise or require the delegation by any person of functions conferred on that person by or under the regulations<sup>14</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

2 Such regulations may make different provision for different cases and circumstances: Police Act 1996 s 50(7); applied by s 51(4). Any power of the Secretary of State to make such regulations is exercisable by statutory instrument: s 102. Any statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 50(8); applied by s 51(4). By virtue of s 103(2), Sch 8 para 1(2), the following regulations have effect as if made under s 51 (as amended): the Special Constables Regulations 1965, SI 1965/536 (amended by SI 1992/1641; SI 2002/3180; SI 2004/645; SI 2006/2278; SI 2007/1162) (see PARA 111 post); the Special Constables (Pensions) Regulations 1973, SI 1973/431 (amended by SI 1979/76; SI 1980/1259) (see PARA 112 post); and the Special Constables (Injury Benefit) Regulations 1987, SI 1987/159 (amended by SI 1987/343) (see PARA 112 post).

3 Police Act 1996 s 51(1). Regulations under s 51 (as amended) for regulating pay and allowances may be made with retrospective effect to any date specified in the regulations, but nothing in this provision is to be construed as authorising pay or allowances payable to any person to be reduced retrospectively: s 50(5); applied by s 51(4). As to the appointment and powers of special constables see PARA 109 ante.

4 Ibid s 51(2)(a).

5 Ibid s 51(2)(b).

6 Ibid s 51(2)(ba) (added by the Police Reform Act 2002 s 35). Regulations under the Police Act 1996 s 51 (as amended) may make provision: (1) for conferring a right to bring and conduct, or otherwise participate or intervene in, any disciplinary proceedings on the Independent Police Complaints Commission (Police Reform Act 2002 s 36(1)(a)); (2) for conferring a right to participate in, or to be present at, disciplinary proceedings on such persons as may be specified or described in the regulations (s 36(1)(b)); and (3) for the Criminal Justice and Public Order Act 1994 s 34 (inferences to be drawn from a failure to mention a fact when questioned or charged: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1552) to apply, with such modifications and in such cases as may be provided for in the regulations, to disciplinary proceedings (Police Reform Act 2002 s 36(1)(c)). 'Disciplinary proceedings' means any proceedings under any such regulations which are identified as disciplinary proceedings by those regulations: s 36(2). As to the Independent Police Complaints Commission see PARA 316 et seq post. 'Person', unless the contrary intention appears, includes a body of persons corporate or unincorporate: Interpretation Act 1978 s 5, Sch 1. As to bodies corporate and unincorporate see COMPANIES; CORPORATIONS.

7 Police Act 1996 s 51(2)(c).

8 Ibid s 51(2)(d).

9 For the meaning of 'enactment' see PARA 102 note 5 ante.

10 Police Act 1996 s 51(2)(e). If such regulations provide for the calculation of any pension payable to or in respect of special constables by reference to a scale of notional remuneration specified in the regulations, such regulations increasing any such notional remuneration may be made with retrospective effect to any date specified in the regulations: s 51(3). See PARA 112 post.

11 For the meaning of 'police authority' see PARA 139 note 1 post.

12 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

13 Police Act 1996 s 51(3A)(a) (s 51(3A) added by the Police Act 1997 s 128(1)).

14 Police Act 1996 s 51(3A)(b) (as added: see note 13 supra).

## UPDATE

### 110 Power to make regulations for special constables

TEXT AND NOTES 4-10--See also Police Act 1996 s 51(2A) (added by Criminal Justice and Immigration Act 2008 Sch 22 para 4(3)). For savings see SI 2008/2993.

TEXT AND NOTE 6--Police Act 1996 s 51(2)(ba) amended: Criminal Justice and Immigration Act 2008 Sch 22 para 4(2). For savings see SI 2008/2993.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (3) THE SPECIAL CONSTABULARY/ (ii) Government, Administration and Conditions of Service/111. Conditions of service.

### **111. Conditions of service.**

A candidate for appointment as a special constable<sup>1</sup> must:

- 11 (1) if not a national of a state which is a contracting party to the Agreement on the European Economic Area<sup>2</sup>, have leave to enter or remain in the United Kingdom<sup>3</sup> for an indefinite period<sup>4</sup>;
- 12 (2) satisfy the chief officer of police<sup>5</sup> that he is sufficiently competent in written and spoken English, and sufficiently numerate, by passing such assessments in written and spoken English, and numeracy, as may be determined by the chief officer of police<sup>6</sup>;
- 13 (3) have attained the age of 18 years<sup>7</sup>;
- 14 (4) be of good character<sup>8</sup>;
- 15 (5) be in good health<sup>9</sup>.

Every special constable must in accordance with the directions of the chief officer have his fingerprints taken<sup>10</sup>. A special constable is subject to the same statutory provisions with respect to conduct and the maintenance of discipline as other police officers<sup>11</sup>.

A special constable may retire subject to his having given to the chief constable<sup>12</sup> a month's written notice of his intention to retire or such shorter notice as may have been accepted by the chief constable<sup>13</sup>. The chief constable may require a special constable to retire on such date as he may specify: (a) on account of age<sup>14</sup>; (b) on the grounds that he is disabled to perform the ordinary duties of a special constable and the disablement is likely to be permanent<sup>15</sup>; or (c) as an alternative to dismissal, where he has been remiss or negligent in the discharge of his duty<sup>16</sup> or otherwise unfit for the same<sup>17</sup>.

A special constable may be reimbursed any out-of-pocket expenses reasonably incurred by him in the execution of his duty or paid an allowance in lieu of such reimbursement<sup>18</sup>. A special constable may be paid an allowance<sup>19</sup> in respect of loss of remuneration in his private employment while required for duty<sup>20</sup>, or in respect of such other matters as the Secretary of State may from time to time approve<sup>21</sup>. A police authority<sup>22</sup> may, following a recommendation of the chief officer of police and with the approval of the Secretary of State, undertake to make payments, known as 'a special constables' allowance', at a rate set by the police authority to all or any number of special constables appointed for its area<sup>23</sup>.

Where a special constable loses remuneration in his private employment in consequence of an injury received or disease contracted in the execution of his duty<sup>24</sup>, or while on duty or while on a journey necessary to enable him to report for duty or to return home after duty<sup>25</sup>, he is entitled to an allowance by way of sick pay<sup>26</sup>. The sick pay is payable for so long as the special constable continues to lose remuneration in his private employment or for a period of 28 weeks, whichever is the less<sup>27</sup>.

1 'Special constable' means a special constable appointed for a police area in England and Wales: Special Constables Regulations 1965, SI 1965/536, reg 6(1). For the meaning of 'police area' see PARA 136 note 2 post. For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante. As to the appointment of special constables see PARA 109 ante.

2 I.e. the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183).

3 For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

4 Special Constables Regulations 1965, SI 1965/536, reg 1(a) (reg 1 substituted by SI 2002/3180). As to leave to enter or remain in the United Kingdom see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 93 et seq.

5 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

6 Special Constables Regulations 1965, SI 1965/536, reg 1(b) (as substituted: see note 4 supra).

7 Ibid reg 1(c) (as substituted (see note 4 supra); and amended by SI 2006/2278).

8 Special Constables Regulations 1965, SI 1965/536, reg 1(d) (as substituted: see note 4 supra).

9 Ibid reg 1(e) (as substituted: see note 4 supra).

10 Ibid reg 1A(1) (reg 1A added by SI 2007/1162). Fingerprints of special constables so taken must be kept separate from the fingerprints of persons whose fingerprints have been taken otherwise than in accordance with the Special Constables Regulations 1965, SI 1965/536, reg 1A(1) (as added) or the Police Regulations 2003, SI 2003/527, reg 18(1) (see PARA 395 post): Special Constables Regulations 1965, SI 1965/536, reg 1A(2) (as so added). The fingerprints of a special constable taken in accordance with reg 1A(1) (as added) or the Police Regulations 2003, SI 2003/527, reg 18(1), and all copies and records of those fingerprints, must be destroyed on his ceasing to be a special constable for the police area for which he is appointed, except that: (1) if on his ceasing to be a special constable he becomes a member of the police force maintained for that area, his fingerprints must be kept in accordance with the Police Regulations 2003, SI 2003/527, reg 18(2) (as amended) (see PARA 395 post); and (2) if on his ceasing to be a special constable for that police area he becomes a member of another police force or is appointed as a special constable for another police area, his fingerprints and all copies and records of those fingerprints must be transferred to the chief officer of that other police force and kept in accordance with reg 18(2) (as amended) or the Special Constables Regulations 1965, SI 1965/536, reg 1A(2) (as added), as the case may be: reg 1A(3) (as so added). For the meaning of 'police force' see PARA 102 note 11 ante.

11 See the Police (Conduct) Regulations 2004, SI 2004/645; and PARA 245 et seq post.

12 A reference to the chief constable is, in relation to a special constable, a reference to the chief constable for the area for which the special constable is appointed, except that, in relation to a special constable appointed for the metropolitan police district or the City of London, such a reference is to be construed as a reference to the Metropolitan Police Commissioner or, as the case may be, the City of London Police Commissioner: see the Special Constables Regulations 1965, SI 1965/536, reg 6(2). As to chief constables see PARA 178 et seq post. As to the metropolitan police district see PARA 137 post. As to the Metropolitan Police Commissioner see PARA 183 post. For the meaning of 'City of London police area' see PARA 138 note 1 post. As to the City of London Police Commissioner see PARA 187 post.

13 Ibid reg 3(1). As to the effect of suspension from office see the Police (Conduct) Regulations 2004, SI 2004/645, reg 4; and PARA 249 post.

14 Special Constables Regulations 1965, SI 1965/536, reg 3(2)(a).

15 Ibid reg 3(2)(b).

16 A reference to duty is a reference to duty as a special constable: *ibid* reg 6(1).

17 Ibid reg 3(2)(c). As to dismissal see the Police (Conduct) Regulations 2004, SI 2004/645, reg 35; and PARA 273 post.

18 Special Constables Regulations 1965, SI 1965/536, reg 4(1). Except as provided in the Special Constables Regulations 1965, SI 1965/536 (as amended), a special constable is not entitled to any remuneration in respect of his services as such: reg 4(4).

19 An allowance paid under *ibid* reg 4 must be of such amount and subject to such conditions as the Secretary of State may from time to time approve: reg 4(3). As to the Secretary of State see PARA 107 note 15 ante.

20 Ibid reg 4(2)(a). See also note 17 supra.

21 Ibid reg 4(2)(b). See also note 17 supra.

22 For the meaning of 'police authority' see PARA 139 note 1 post.

23 Special Constables Regulations 1965, SI 1965/536, reg 5A(1) (reg 5A added by SI 1992/1526; and substituted by SI 2002/3180). An approval given for these purposes may be withdrawn with effect from the date three months after notice of that approval has been given to the police authority: Special Constables Regulations 1965, SI 1965/536, reg 5A(2) (as so added and substituted). The withdrawal of an approval does not affect rights acquired and obligations incurred, whether prospectively or otherwise, in respect of any period before the date from which the withdrawal takes effect: reg 5A(3) (as so added and substituted). Different rates of special constables' allowance may be paid to different special constables appointed within a police area: reg 5A(4) (as so added and substituted). See also note 17 supra.

24 Ibid reg 5(1)(a).

25 Ibid reg 5(1)(b).

26 Ibid reg 5(1).

27 Ibid reg 5(2) (amended by SI 1992/1641). Subject to the Special Constables Regulations 1965, SI 1965/536, reg 5(3) (as substituted), the rate of sick pay is the rate of such loss of remuneration: reg 5(2) (as so amended). There must be deducted from the sick pay an amount equal to the amount of any of the following to which the special constable is entitled: (1) any short-term incapacity benefit at the lower rate; or (2) any statutory sick pay: reg 5(3)(a), (b) (reg 5(3) substituted by SI 1992/1641); Interpretation Act 1978 s 17(2); Social Security (Incapacity for Work) Act 1994 s 13(2). As to statutory sick pay see EMPLOYMENT vol 39 (2009) PARA 498 et seq; and as to incapacity benefit see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 59 et seq.

## UPDATE

### 111 Conditions of service

NOTES 11, 13, 17--SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (3) THE SPECIAL CONSTABULARY/ (ii) Government, Administration and Conditions of Service/112. Pensions.

### 112. Pensions.

Regulations under the Police Pensions Act 1976<sup>1</sup> relating to pensions payable in the case of regular police officers are applied with modifications in the case of special constables. A special constable who is permanently disabled<sup>2</sup> as a result of an injury received without his own default in the execution of his duty as a special constable is entitled to an injury award<sup>3</sup> and a pension<sup>4</sup>. If he dies as the result of such an injury his widow and children are entitled to, and certain dependent relatives may be granted, awards<sup>5</sup>. Special constables do not pay pension contributions<sup>6</sup>.

An award to or in respect of a special constable is payable by the police authority for the police area for which he was appointed at the time when he received the injury or contracted the disease<sup>7</sup>.

Awards to special constables are 'official pensions' for the purposes of the Pensions (Increase) Act 1971<sup>8</sup> and, subject to the terms of that Act, therefore qualify for increases under that Act<sup>9</sup>.

1 Ie regulations under the Police Pensions Act 1976 s 1 (as amended): see PARA 407 post.

2 Disablement means inability occasioned by infirmity of mind or body, in the case of a special constable, to follow his ordinary employment: Special Constables (Pensions) Regulations 1973, SI 1973/431, reg 3(3).



3 As to special constables' injury awards see *ibid* regs 3(2), (3), 4(1), (2). See also *Garvin v City of London Police Authority* [1944] KB 358, [1944] 1 All ER 378; *Huddersfield Police Authority v Watson* [1947] KB 842, [1947] 2 All ER 193.

4 For calculation of the amount of benefit payable on disablement or death see the Special Constables (Injury Benefit) Regulations 1987, SI 1987/159 (amended by SI 1987/343).

5 See the Special Constables (Pensions) Regulations 1973, SI 1973/431, regs 5, 7, 8 (reg 5 amended by SI 1979/76). A widow's augmented award and child's special gratuity may be payable in certain circumstances specified in the Special Constables (Pensions) Regulations 1973, SI 1973/431, reg 6(1) (eg where death is the result of a murderous attack or is caused in an attempt to save life): see regs 6, 9.

6 The contribution provisions of the Police Pensions Regulations 1987, SI 1987/257, regs G2, G3 (both as amended) are not applied by the Special Constables (Pensions) Regulations 1973, SI 1973/431, regs 3(2), 11. Special constables receive no remuneration (although they may receive certain expenses and allowances): see PARA 111 ante.

7 See *ibid* reg 12. As to police authorities see PARA 139 post; and as to police areas see PARA 136 post.

8 See the Pensions (Increase) Act 1971 s 5(1), Sch 2 para 43(b) (substituted by the Police Act 1996 s 103, Sch 7 para 18(3)).

9 As to the increase of official pensions under the Pensions (Increase) Act 1971 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 615-616. Widows', dependent relatives' and children's awards qualify for increases corresponding to those under the Pensions (Increase) Act 1971 in pursuance of the Police Pensions Regulations 1987, SI 1987/257, regs E9, E10: see the Special Constables (Pensions) Regulations 1973, SI 1973/431, regs 5(2), 7(2), 8(2) (reg 5(2) as amended: see note 5 supra).

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## **(4) POLICE CADETS**

### **113. The status of the police cadet.**

The chief officer of police<sup>1</sup> of a police force<sup>2</sup> may<sup>3</sup> appoint persons as police cadets to undergo training with a view to becoming members of that police force<sup>4</sup>. All police cadets are under the control of, and subject to dismissal by, the chief officer of police<sup>5</sup>. For the purposes of any enactment relating to the functions of employers and of any rule of law with respect to the vicarious liability of employers, the police authority<sup>6</sup> that maintains a police force is treated as the employer of any police cadets undergoing training with the force<sup>7</sup>. Nevertheless, a cadet is not employed by the police authority and so cannot complain against the authority to an employment tribunal in respect of unfair dismissal<sup>8</sup>.

For the purposes of the statutory provisions relating to protection from discrimination on grounds of sex<sup>9</sup>, race<sup>10</sup>, disability<sup>11</sup>, age<sup>12</sup>, sexual orientation<sup>13</sup> or religion or belief<sup>14</sup>, in the field of employment, and the provisions under the discrimination legislation<sup>15</sup> by which an employer is liable for the acts of his employees, appointment as a police cadet is treated as employment<sup>16</sup>.

A person who, otherwise than under a contract of employment, holds an appointment as a police cadet is treated as an employee of the chief officer of police for the purposes of Part I<sup>17</sup> of the Health and Safety at Work etc Act 1974<sup>18</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 In accordance with regulations under the Police Act 1996 s 52 (as amended): see PARA 114 post. As to such regulations see PARAS 115-118 post.

4 Ibid s 28(1).

5 Ibid s 28(2). This provision is expressed to be subject to regulations under s 52 (as amended): see note 3 supra; and PARA 114 post.

6 For the meaning of 'police authority' see PARA 139 note 1 post.

7 Police Act 1996 s 28(3). This is expressed to be without prejudice to s 28(2) (see the text to note 5 supra). As to vicarious liability see TORT vol 45(2) (Reissue) PARA 329.

8 *Wiltshire Police Authority v Wynn* [1981] QB 95, [1981] 3 WLR 445, CA (where it was held that, although a police authority is treated as the employer for the particular statutory functions and vicarious liability specified, it has no power to dismiss a police cadet; the appointment of a police cadet is primarily for the purpose of undergoing training, and although the appointment has some of the elements of a contract of service, these are secondary and incidental to the purposes of teaching and learning; accordingly, in this case, the police cadet was held not to be an employee of the authority and the tribunal had no jurisdiction to entertain a complaint for unfair dismissal).

9 Ie the Sex Discrimination Act 1975 Pt II (ss 6-20A) (as amended): see DISCRIMINATION.

10 Ie the Race Relations Act 1976 Pt II (ss 4-16) (as amended): see DISCRIMINATION.

11 Ie the Disability Discrimination Act 1995 Pt II (ss 3A-18E) (as amended): see DISCRIMINATION.

12 Ie the Employment Equality (Age) Regulations 2006, SI 2006/1031, Pt 2 (regs 7-24): see DISCRIMINATION.

13 Ie the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, Pt 2 (regs 6-21) (as amended): see DISCRIMINATION.

14 Ie the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, Pt 2 (regs 6-21) (as amended): see DISCRIMINATION.

15 Ie the Sex Discrimination Act 1975 s 41; the Race Relations Act 1976 s 32; the Disability Discrimination Act 1995 s 58; the Equality Act 2006 s 74; the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 22; the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 22; the Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 25; and the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 30: see DISCRIMINATION.

16 See the Sex Discrimination Act 1975 s 17(1), (6) (s 17(1) amended by the Sex Discrimination Act 1975 (Amendment) Regulations 2003, SI 2003/1657, reg 2(1), (2)); the Race Relations Act 1976 s 76A(1), (2) (s 76A added by the Race Relations (Amendment) Act 2000, s 4); the Disability Discrimination Act 1995 s 64A(1), (6) (s 64A added by the Disability Discrimination Act 1995 (Amendment) Regulations 2003, SI 2003/1673, regs 3(1), 25); the Equality Act 2006 s 75(1); the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 11(1), (2), (6) (reg 11(1), (2) amended by SI 2006/594); the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 11(1), (2), (6); the Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 13(1), (6); the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 31(1); and PARA 105 ante.

17 Ie the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended).

18 See *ibid* s 51A(1), (2) (as added); and PARA 406 post.

## UPDATE

### 113 The status of the police cadet

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## 114. Regulations for police cadets.

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> as to the government, administration and conditions of service<sup>3</sup> of police cadets<sup>4</sup>. In relation to any matter as to which provision may be made by such regulations, the regulations may: (1) authorise or require provision to be made by, or confer discretionary powers on, the Secretary of State, police authorities<sup>5</sup>, chief officers of police<sup>6</sup> or other persons<sup>7</sup>; or (2) authorise or require the delegation by any person of functions conferred on that person by or under the regulations<sup>8</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

2 Such regulations may make different provision for different cases and circumstances: *ibid* s 50(7); applied by s 52(2). Any power of the Secretary of State to make such regulations is exercisable by statutory instrument: s 102. Any statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 50(8); applied by s 52(2). Before making regulations under s 52 (as amended), the Secretary of State must submit a draft to and consider recommendations made by the Police Negotiating Board: see s 62 (as amended); and PARA 424 post. By virtue of s 103(2), Sch 8 para 1(2), the following regulations have effect as if made under s 52 (as amended): the Police Cadets (Pensions) Regulations 1973, SI 1973/430 (amended by SI 1979/75; SI 1980/1260; SI 1983/990; SI 1987/157) (see PARA 118 post); the Police Cadets Regulations 1979, SI 1979/1727 (amended by SI 1982/350; SI 1982/1487; SI 1983/161; SI 1984/1633; SI 1985/131; SI 1985/686; SI 1987/1754; SI 1988/728; SI 1990/2618; SI 1992/276; SI 1993/2528) (see PARAS 115-117 post); and the Police Cadet (Injury Benefit) Regulations 1987, SI 1987/158 (amended by SI 1987/342) (see PARA 118 post).

3 Regulations under the Police Act 1996 s 52 (as amended) for regulating pay and allowances may be made with retrospective effect to any date specified in the regulations, but nothing in this provision is to be construed as authorising pay or allowances payable to any person to be reduced retrospectively: s 50(5); applied by s 52(2).

4 *Ibid* s 52(1).

5 For the meaning of 'police authority' see PARA 139 note 1 post.

6 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

7 Police Act 1996 s 52(1A)(a) (s 52(1A) added by the Police Act 1997 s 128(2)). For the meaning of 'person' see PARA 110 note 6 ante.

8 Police Act 1996 s 52(1A)(b) (as added: see note 7 supra).

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## 115. Appointment and dismissal of police cadets.

The qualifications for appointment as a police cadet are that the person concerned at the time of his appointment: (1) has produced to the chief officer of police<sup>1</sup> satisfactory references as to character<sup>2</sup>; (2) has attained the age of 16 years and has not attained the age of 18 years<sup>3</sup>; (3) has satisfied the chief officer of police that he is likely, on attaining the age of 18 years six months, to be able to satisfy the qualifications for appointment to a police force<sup>4</sup> in the rank of constable and, for that purpose, has been examined by a registered medical practitioner<sup>5</sup> approved by the police authority<sup>6</sup>. A person may be appointed a police cadet notwithstanding that he has not attained the age of 16 years or has attained the age of 18 years if the chief officer of police, after considering the circumstances of the case, so decides<sup>7</sup>. A candidate for

appointment as a police cadet must be given a notice describing the conditions of service relating to the appointment<sup>8</sup>.

A police cadet may resign only if he has given to the police authority two weeks' written<sup>9</sup> notice of his intention to resign or such shorter notice as may have been accepted by that authority<sup>10</sup>. A police cadet's service as such terminates on his appointment as a member of a police force<sup>11</sup>. The chief officer of police (or, in the case of the metropolitan police force<sup>12</sup>, an assistant metropolitan police commissioner<sup>13</sup>) may at any time terminate a police cadet's service<sup>14</sup>. A police cadet whose service is so terminated, otherwise than for misconduct, is entitled to receive two weeks' notice or two weeks' pay in lieu of it<sup>15</sup>.

Where the chief officer of police (or, in the case of the metropolitan police force, an assistant metropolitan police commissioner) is considering terminating a police cadet's service<sup>16</sup> he must, before reaching a decision, afford to the cadet an opportunity of a personal interview with him or a deputy chief constable or an assistant chief constable<sup>17</sup> (or, in the case of the metropolitan police forces, with an assistant metropolitan police commissioner, a deputy assistant metropolitan police commissioner or a commander<sup>18</sup>); and at any such interview the cadet is entitled to be accompanied by such person as he may choose and to make such representations as he thinks fit<sup>19</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 Police Cadets Regulations 1979, SI 1979/1727, reg 4(1)(a).

3 Ibid reg 4(1)(b). This provision is subject to reg 4(2) (see the text to note 7 infra): reg 4(1)(b).

4 For the meaning of 'police force' see PARA 102 note 11 ante. As to the qualifications for appointment to a police force see PARA 232 post.

5 'Registered medical practitioner' means a fully registered person within the meaning of the Medical Act 1983 (see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARAS 3-4): Interpretation Act 1978 s 5, Sch 1 (definition amended by the Medical Act 1983 s 56(1), Sch 5 para 18).

6 Police Cadets Regulations 1979, SI 1979/1727, reg 4(1)(c). For the meaning of 'police authority' see PARA 139 note 1 post. The Police Cadets Regulations 1979, SI 1979/1727 (as amended) have effect as if made under the Police Act 1996 s 52 (as amended): see s 103(2), Sch 8 para 1(2); and PARA 114 ante. The provisions of s 28(1), (2) are expressed to be subject to these regulations: see PARA 113 ante.

7 Police Cadets Regulations 1979, SI 1979/1727, reg 4(2).

8 Ibid reg 4A (added by SI 1982/350).

9 'Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form; and expressions referring to writing are to be construed accordingly: Interpretation Act 1978 s 5, Sch 1.

10 Police Cadets Regulations 1979, SI 1979/1727, reg 5(1).

11 Ibid reg 5(2).

12 As to the metropolitan police force see PARA 137 post.

13 As to assistant metropolitan police commissioners see PARA 186 post.

14 Police Cadets Regulations 1979, SI 1979/1727, reg 5(3) (amended by SI 1988/728). This is expressed to be subject to the provisions of the Police Cadets Regulations 1979, SI 1979/1727 (as amended). See also *Wiltshire Police Authority v Wynn* [1981] QB 95, [1981] 3 WLR 445, CA; and PARA 113 text to note 8 ante.

15 Police Cadets Regulations 1979, SI 1979/1727, reg 5(4).

16 Ie under ibid reg 5(3) (as amended): see the text to notes 12-14 supra.

17 As to deputy chief constables see PARA 180 post; and as to assistant chief constables see PARA 181 post.

18 As to deputy assistant metropolitan police commissioners and commanders see PARA 186 post.

19 Police Cadets Regulations 1979, SI 1979/1727, reg 5(5) (amended by SI 1982/350; SI 1985/131; SI 1988/728).

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## **116. Conditions of service.**

A police cadet must not engage in any other employment for gain except with the consent of the chief officer of police<sup>1</sup>. The normal hours of duty of a police cadet are determined by or with the authority of the chief officer of police<sup>2</sup>. However, where a police cadet, for the purposes of training, is assigned to duties with a member of the police force<sup>3</sup>, his normal weekly period of duty is 40 hours<sup>4</sup>.

A police cadet whose actual period of duty in any week exceeds his normal period of duty (which excess period of duty is referred to as 'overtime') must, within 28 days, be granted in respect of each complete quarter of an hour of overtime an equal period of time off and, in addition, in respect of each complete three-quarters of an hour of overtime an additional quarter of an hour of time off<sup>5</sup>. To such extent, if any, as the chief officer of police in a particular case may decide, the period spent by a police cadet on a journey necessary to enable him to report for duty or to return home after duty is treated for these purposes as falling within a period of duty<sup>6</sup>. A police cadet is to be granted a day's leave on each public holiday<sup>7</sup>.

The annual leave of a police cadet is granted at such times and is to be of such duration as may be determined by or with the authority of the chief officer of police<sup>8</sup>. Where a police cadet, for the purposes of training, is assigned to duties with a member of the police force, he must normally be granted three weeks<sup>9</sup> annual leave a year<sup>10</sup>. Except where this applies, a police cadet is normally granted ten weeks' annual leave a year<sup>11</sup>.

A police cadet is entitled to sick leave for any period for which he is unfit<sup>12</sup> for duty on account of injury or illness, if a registered medical practitioner<sup>13</sup> certifies that he is so unfit<sup>14</sup> or the period consists of not more than seven days<sup>15</sup>.

A police cadet may, at the discretion of the chief officer of police, be granted special leave, with or without pay as the chief officer may determine<sup>16</sup>.

1 Police Cadets Regulations 1979, SI 1979/1727, reg 6. For the meaning of 'chief officer of police' see PARA 105 note 7 ante. As to the appointment of police cadets see PARA 115 ante; and as to their remuneration see PARA 117 post. As to the Police Cadets Regulations 1979, SI 1979/1727, see PARA 115 note 6 ante.

2 Ibid reg 7(1). This provision is expressed to be subject to reg 7(2): see the text to notes 3-4 infra.

3 For the meaning of 'police force' see PARA 102 note 11 ante.

4 Police Cadets Regulations 1979, SI 1979/1727, reg 7(2).

5 Ibid reg 7(3).

6 Ibid reg 7(4).

7 Ibid reg 8.

8 Ibid reg 9(1). This provision is expressed to be subject to reg 9(2), (3): see the text to notes 9-11 infra.

9 'Week' means a continuous period of seven days: ibid reg 3(2).

10 Ibid reg 9(2).

11 Ibid reg 9(3). However, where a cadet is required to spend a period camping or engaging in other activity of a partly recreational character, the chief officer of police may direct that the whole or a specified part of that period is to be treated for the purposes of reg 9(3) as if it were a period of annual leave: reg 9(3).

12 Ibid reg 10 (as amended) applies to a police cadet who is in quarantine as it applies to a cadet who is ill and any reference to unfitness is to be construed accordingly: reg 10(2).

13 For the meaning of 'registered medical practitioner' see PARA 115 note 5 ante.

14 Police Cadets Regulations 1979, SI 1979/1727, reg 10(1)(a).

15 Ibid reg 10(1)(b) (amended by SI 1982/1487).

16 Police Cadets Regulations 1979, SI 1979/1727, reg 11.

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### **117. Pay and allowances.**

The rate of pay of a police cadet is to be in accordance with the appropriate scale<sup>1</sup>. If the chief officer of police<sup>2</sup> so determines, a cadet is not entitled to pay for special leave or unauthorised absence<sup>3</sup>.

Travel allowances in respect of up to three journeys home a year are paid<sup>4</sup> but, except with the approval of the Secretary of State<sup>5</sup>, no allowance which is not prescribed may be paid<sup>6</sup>.

A cadet is provided with uniform and equipment<sup>7</sup> and with board and lodging by his police authority<sup>8</sup>, but for the latter a prescribed charge is made<sup>9</sup>.

1 Police Cadets Regulations 1979, SI 1979/1727, reg 13(1). The appropriate scale is that set out in reg 13(1) (b), Sch 2 Pt II (reg 13(1)(b) substituted by SI 1992/276; Police Cadets Regulations 1979, SI 1979/1727, Sch 2 substituted by SI 1993/2528). As to the calculation of pay see the Police Cadets Regulations 1979, SI 1979/1727, reg 15; as to the deduction of sickness benefit or statutory sick pay see reg 13(2) (substituted by SI 1983/161); and as to the reduction of pay on account of sick leave see the Police Cadets Regulations 1979, SI 1979/1727, reg 13(3).

2 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

3 Police Cadets Regulations 1979, SI 1979/1727, reg 13(4). As to a police cadet's entitlement to leave see PARA 116 ante.

4 See ibid reg 17 (amended by SI 1987/1754).

5 As to the Secretary of State see PARA 107 note 15 ante.

6 See the Police Cadets Regulations 1979, SI 1979/1727, reg 16.

7 See ibid reg 18 (amended by SI 1984/1633; SI 1985/686).

8 See the Police Cadets Regulations 1979, SI 1979/1727, reg 14(1), (3). For the meaning of 'police authority' see PARA 139 note 1 post.

9 See ibid reg 14(1), (2), Sch 3 (amended by SI 1990/2618; SI 1993/2528).

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## 118. Pensions.

The Police Cadets (Pensions) Regulations 1973<sup>1</sup> have effect in relation to a police cadet who on 1 April 1971 was serving as such by virtue of his appointment before that date, and had attained the age of 18 years<sup>2</sup>.

A police cadet who ceases or has ceased to serve as such and is permanently disabled<sup>3</sup> as a result of a qualifying injury<sup>4</sup> is entitled to a gratuity and, in addition, an injury pension, together with, if he ceased to serve on the ground of disablement, an ill-health pension<sup>5</sup>.

A widow of a police cadet who dies or has died as a result of a qualifying injury is entitled to certain awards<sup>6</sup>. A child of a police cadet who dies or has died as the result of a qualifying injury is entitled to a child's special allowance<sup>7</sup>. If such an injury only manifests itself, or results in death, after the cadet has become a member of a police force, awards are payable to or in respect of him as such and not as a cadet<sup>8</sup>. Police cadets do not pay pension contributions<sup>9</sup>.

An award to or in respect of a police cadet is payable by the police authority maintaining the force to which he was attached when he received the injury<sup>10</sup>.

Awards to police cadets are 'official pensions' for the purposes of the Pensions (Increase) Act 1971<sup>11</sup> and, subject to the terms of that Act, therefore qualify for increases under that Act<sup>12</sup>.

1     I.e. the Police Cadets (Pensions) Regulations 1973, SI 1973/430 (as amended). The Police Cadets (Pensions) Regulations 1973, SI 1973/430 (as amended) have effect as if made under the Police Act 1996 s 52 (as amended) (see PARA 114 ante): s 103(2), Sch 8 para 1(2). As to pensions of police cadets see also the Superannuation (Miscellaneous Provisions) Act 1967 s 13 (amended by the Social Security Act 1973 ss 100, 101, Sch 27 para 72; the Social Security (Consequential Provisions) Act 1975 ss 1(3), 5, Sch 1 Pt I; and the Police Act 1996 s 103(1), Sch 7 para 13).

2     Police Cadets (Pensions) Regulations 1973, SI 1973/430, reg 4(2) (amended by SI 1983/990; SI 1987/158). As to the effect of the Police Cadets (Pensions) Regulations 1973, SI 1973/430, reg 4(2) (as amended) see reg 4(3) (amended by SI 1983/990).

However, the Police Cadets (Pensions) Regulations 1973, SI 1973/430 (as amended) do not have effect in relation to such a police cadet if, before that date, he elected under the Police Cadets (Pensions) Regulations 1971, SI 1971/239, reg 3(2) (revoked) that those regulations should not have effect in relation to him: see the Police Cadets (Pensions) Regulations 1973, SI 1973/430, reg 4(2). The Police Cadets (Pensions) Regulations 1971, SI 1971/239, are revoked except in the case of an award to or in respect of a person who ceased to serve as a police cadet before 1 April 1972 (including an award on the death of such a person on or after that date): see the Police Cadets (Pensions) Regulations 1973, SI 1973/430, reg 2.

3     'Disablement' means inability occasioned by infirmity of mind or body, in the case of a police cadet, to perform the ordinary duties of a male or female member of a police force, as the case may be, or, in the case of a child, to earn a living; but where it is necessary to determine the degree of a police cadet's disablement, it is determined by reference to the degree to which his earning capacity has been affected as a result of a qualifying injury: *ibid* reg 3(4). However, a police cadet is deemed to be totally disabled if, as a result of a qualifying injury, he is receiving treatment as an in-patient at a hospital: *ibid* reg 3(4).

4     *Ibid* reg 5(1). A reference to a qualifying injury is a reference to an injury received by a person, without his own default: (1) while on duty as a police cadet or while on a journey necessary to enable him to report for duty or to return to his usual place of abode after duty; or (2) while taking action which, in the opinion of the police authority, it was appropriate that he should have taken by reason of his being a police cadet; or (3) where he would not have received the injury had he not been known to be a police cadet; or (4) where the police authority is of the opinion that the preceding condition may be satisfied and that the injury should be treated as one received as aforesaid, and, in the case of a police cadet in relation to whom the Police Cadets (Pensions) Regulations 1973, SI 1973/430 (as amended) have taken effect, includes a reference to an injury so received before the regulations took effect in relation to him: *ibid* reg 3(3). As to police authorities see PARA 139 *et seq* post.

5     See *ibid* reg 5(2). This is expressed to be subject to the provisions of the Police Cadets (Pensions) Regulations 1973, SI 1973/430 (as amended). As to police cadets' ill-health and injury awards see reg 5(3)-(5) (amended by SI 1979/75; SI 1980/1260).

6 See the Police Cadets (Pensions) Regulations 1973, SI 1973/430, reg 6(1), (2). As to a widow's special award see reg 6(3)-(4) (added by SI 1979/75). As to a widow's augmented award see the Police Cadets (Pensions) Regulations 1973, SI 1973/430, reg 7. As to a dependent relative's special pension see reg 7A (added by SI 1987/157). As to the calculation of the amount of benefit payable on a police cadet's death to his widow, child or dependent relative see the Police Cadet (Injury Benefit) Regulations 1987, SI 1987/158 (amended by SI 1987/342).

7 See the Police Cadets (Pensions) Regulations 1973, SI 1973/430, reg 8. As to a child's special gratuity see reg 9. As to the average pensionable pay and pensionable service see reg 11.

8 See *ibid* reg 10.

9 The contribution provisions of the Police Pensions Regulations 1987, SI 1987/257, regs G2, G3 are not applied by the Police Cadets (Pensions) Regulations 1973, SI 1973/430 (as amended): see regs 3(2), 12 (reg 3(2) amended by SI 1979/75).

10 Police Cadets (Pensions) Regulations 1973, SI 1973/430, regs 3(7), 13.

11 See the Pensions (Increase) Act 1971 s 5(1) (amended by the Superannuation Act 1972 s 29(1), Sch 6 para 85); and the Pensions (Increase) Act 1971 Sch 2 para 43(b) (substituted by the Police Act 1996 s 103, Sch 7 para 18(1), (3)).

12 As to the increase of official pensions under the Pensions (Increase) Act 1971 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 615-616. For increase of widow's pension or child's allowance under the Police Pensions Regulations 1987, SI 1987/257, see regs E8-E10 (reg E8 amended by SI 1992/2349; SI 1994/641; SI 2006/932); and the Police Cadets (Pensions) Regulations 1973, SI 1973/430, regs 6(2), 8(2).

## UPDATE

### 118 Pensions

NOTE 12--SI 1987/257 reg E8 further amended: SI 2008/1887, SI 2009/2060. SI 1987/257 reg E10 further amended: SI 2008/1887.

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## (5) OTHER BODIES OF CONSTABLES

### (i) In general

#### 119. Constables employed by particular bodies.

Members of police forces<sup>1</sup> and special constables<sup>2</sup> appointed under the Police Act 1996 are responsible for the preservation of the peace generally<sup>3</sup>. Members of other police forces established for particular purposes, such as the Ministry of Defence Police<sup>4</sup>, the Civil Nuclear Constabulary<sup>5</sup> and the British Transport Police<sup>6</sup>, may have more specialised powers and duties.

Under a number of enactments passed since the beginning of the nineteenth century, constables may be appointed by justices of the peace on the application of various bodies for the purpose of providing special protection for the interests of the body in question, whose employees the constables normally are<sup>7</sup>. These constables are sometimes called 'special constables' and sometimes simply 'constables', but this is no more than a distinction of terminology. Subject to the terms of the relevant enactment, the appointing body is not liable for the acts of such a constable performed on his own responsibility as constable, but may be liable where the person acts on the instructions of his employer<sup>8</sup>. There are also a number of



enactments which provide not for the appointment of employees to the office of constable but for certain employees to have the powers of a constable<sup>9</sup>.

Subject to the terms of the relevant enactment, where jurisdiction is conferred upon justices of the peace to appoint constables on the application of any particular body, the justices may not decline to exercise that jurisdiction<sup>10</sup>.

1 See PARAS 106-107 ante.

2 See PARAS 108-112 ante.

3 As to the preservation of the Queen's peace see PARA 477 et seq post.

4 As to the Ministry of Defence Police see PARAS 120-127 post.

5 As to the Civil Nuclear Constabulary see PARA 128 post.

6 As to the British Transport Police see PARA 129 post.

7 See PARA 131 et seq post. Whereas these constables may for domestic purposes be regarded as members of a 'force', the expression 'member of a police force' normally connotes a member of a police force mentioned in PARAS 106-107 ante; and 'police force' is in effect generally so defined: see PARA 102 note 11 ante. As regards the early history of private police see Radzinowicz *A History of English Criminal Law and its Administration From 1750* (1956) 202-207.

8 *Goff v Great Northern Rly Co* (1861) 3 E & E 672; *Mahoney v Besley* (1865) 4 F & F 544. As to the status of constables generally see PARAS 102, 104 ante.

9 See PARA 135 post.

10 *R v Worcestershire Justices, ex p Lower Avon Navigation Co Ltd* (1939) 108 LJKB 513. It was otherwise in the case of an application for the appointment of additional constables to a police force before the appointment of such constables was abolished: see *Allen v Preece* (1854) 10 Exch 443.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(ii) The Ministry of Defence Police/120. Establishment and functions of the Ministry of Defence Police.

## **(ii) The Ministry of Defence Police**

### **120. Establishment and functions of the Ministry of Defence Police.**

There is a police force known as the Ministry of Defence Police<sup>1</sup> which consists of persons nominated by the Secretary of State<sup>2</sup>, and persons who, before 5 May 1987, were appointed special constables<sup>3</sup> on the nomination of the Defence Council<sup>4</sup>. A person nominated must be attested as a constable by making the declaration required of a member of a police force<sup>5</sup> maintained under the Police Act 1996 before a justice of the peace<sup>6</sup>. The Secretary of State must appoint a chief constable for the Ministry of Defence Police, and the Ministry of Defence Police operate under the chief constable's direction and control<sup>7</sup>. The Secretary of State has power to suspend a member of the Ministry of Defence Police from duty<sup>8</sup>, and to terminate a person's membership<sup>9</sup>. The Secretary of State must appoint a Ministry of Defence Police Committee, to advise him with respect to such matters concerning the Ministry of Defence Police as he may from time to time require; and he may make regulations concerning its membership and procedure<sup>10</sup>.

Members of the Ministry of Defence Police have the powers and privileges of constables in the United Kingdom<sup>11</sup> in the following places:

- 16 (1) land<sup>12</sup>, vehicles, vessels<sup>13</sup>, aircraft and hovercraft which are in the possession, under the control, or used for the purposes of the Secretary of State for Defence<sup>14</sup>, the Defence Council<sup>15</sup>, a headquarters<sup>16</sup> or defence organisation<sup>17</sup>, or the service authorities<sup>18</sup> of a visiting force<sup>19</sup>;
- 17 (2) land, vehicles, vessels, aircraft and hovercraft which are in the possession, under the control or used for the purposes of an ordnance company<sup>20</sup> and used for the purpose of, or for purposes which include, the making or development of ordnance or otherwise for naval, military or air force purposes<sup>21</sup>;
- 18 (3) land, vehicles, vessels, aircraft and hovercraft which are in the possession, under the control or used for the purposes of a dockyard contractor<sup>22</sup> and used for the purpose of, or for purposes which include, providing designated services<sup>23</sup> or otherwise for naval, military or air force purposes<sup>24</sup>; and
- 19 (4) land where the Secretary of State has agreed to provide the services of the Ministry of Defence Police under an agreement, notice of which has been published in the London Gazette<sup>25</sup>.

In other places members of the force have the powers and privileges of constables for limited purposes only<sup>26</sup>.

Where a member of the Ministry of Defence Police has been requested by a constable of the police force for any police area<sup>27</sup>, the Police Service of Northern Ireland<sup>28</sup>, the British Transport Police Force<sup>29</sup> or the Civil Nuclear Constabulary<sup>30</sup>, to assist him in the execution of his duties in relation to a particular incident, investigation or operation, members of the Ministry of Defence Police have the powers and privileges of constables for the purposes of that incident, investigation or operation<sup>31</sup>. Members of the Ministry of Defence Police have in any police area the same powers and privileges<sup>32</sup> as constables of the police force for that police area<sup>33</sup> in relation to persons whom they suspect on reasonable grounds of having committed, being in the course of committing or being about to commit an offence<sup>34</sup>, or if they believe on reasonable grounds that they need those powers and privileges in order to save life or to prevent or minimise personal injury<sup>35</sup>.

These provisions<sup>36</sup> apply in territorial waters adjacent to the United Kingdom as if the relevant constabulary powers and privileges were those of constables in the nearest part of the United Kingdom<sup>37</sup>.

1 Ministry of Defence Police Act 1987 s 1(1).

2 Ibid s 1(1)(a). As to the Secretary of State see PARA 107 note 15 ante.

3 Ie under the Special Constables Act 1923 s 3(1) (substitution of special constables for metropolitan police at armament depots, etc): see the Ministry of Defence Police Act 1987 s 1(1)(b).

4 Ibid s 1(1)(b). As to the Defence Council see the Defence (Transfer of Functions) Act 1964 s 1(1)(b); and ARMED FORCES vol 2(2) (Reissue) PARA 2; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 443-447.

5 For the meaning of 'police force' see PARA 102 note 11 ante.

6 Ministry of Defence Police Act 1987 s 1(2)(a) (amended by the Police Act 1996 s 103(1), Sch 7 para 41). As to attestation as a constable see PARA 103 ante.

7 Ministry of Defence Police Act 1987 s 1(3).

8 Ibid s 1(4)(a).

9 Ibid s 1(4)(b).

10 Ibid s 1(5). The power to make regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(6). Any power of the Secretary of

State to make such regulations includes power to make different provision for different purposes: s 6A (added by the Police Reform Act 2002 s 79(4)). The Ministry of Defence Police (Police Committee) Regulations 1995, SI 1995/939, have been made.

As from a day to be appointed, s 1(5) is substituted so as to provide that the Secretary of State must appoint a committee, to be known as the Ministry of Defence Police Committee: (1) to advise him with respect to such matters concerning the Ministry of Defence Police as he may from time to time require; and (2) to exercise such other functions as may be conferred on it by or under the Ministry of Defence Police Act 1987; and the Secretary of State may make regulations concerning its membership and procedure: s 1(5) (prospectively substituted by the Police Reform Act 2002 ss 79(3), 108(2)). At the date at which this volume states the law no such day had been appointed.

11 For the meaning of 'United Kingdom' see PARA 102 note 7 ante. As to the powers and privileges of constables see PARA 477 et seq post.

12 'Land' includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land: Interpretation Act 1978 s 5, Sch 1.

13 'Vessel' includes any ship or boat or any other description of vessel used in navigation: Ministry of Defence Police Act 1987 s 2(5).

14 Ibid s 2(2)(a)(i). As to the Secretary of State for Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq.

15 Ibid s 2(2)(a)(ii).

16 'Headquarters', 'defence organisation' and 'visiting force' mean respectively a headquarters, defence organisation or visiting force to which the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736 (see ARMED FORCES vol 2(2) (Reissue) PARAS 142, 150), or any order replacing that order, applies: Ministry of Defence Police Act 1987 s 2(5).

17 Ibid s 2(2)(a)(iii).

18 'Service authorities' means naval, military or air force authorities: ibid s 2(5).

19 Ibid s 2(2)(a)(iv).

20 Ibid s 2(2)(b)(i). 'Ordnance company' means a company in which there is for the time being vested any property, right or liability which has at some time been the subject of a transfer by virtue of a provision made under the Ordnance Factories and Military Services Act 1984 s 1(1)(a): Ministry of Defence Police Act 1987 s 2(5).

21 Ibid s 2(2)(b)(ii).

22 Ibid s 2(2)(c)(i). 'Dockyard contractor' means a company which is a dockyard contractor as defined by the Dockyard Services Act 1986 s 1(13): Ministry of Defence Police Act 1987 s 2(5).

23 'Designated services' means services designated under the Dockyard Services Act 1986 s 1(1): Ministry of Defence Police Act 1987 s 2(5).

24 Ibid s 2(2)(c)(ii).

25 Ibid s 2(2)(e), (5).

26 See ibid s 2(3) (amended by the Anti-terrorism, Crime and Security Act 2001 s 125, Sch 8 Pt 6). Members of the Ministry of Defence Police also have the powers and privileges of constables in any place in the United Kingdom to which the Ministry of Defence Police Act 1987 s 2(2) (see the text to notes 11-25 supra) does not for the time being apply: (1) in relation to Crown property, international defence property, ordnance property and dockyard property (s 2(3)(a)); (2) in relation to persons subject to the control of the Defence Council, employed under or for the purposes of the Ministry of Defence or the Defence Council, or in respect of whom the service courts and service authorities of any country may exercise powers by virtue of the Visiting Forces Act 1952 s 2 (as amended) (see ARMED FORCES vol 2(2) (Reissue) PARA 143) (Ministry of Defence Police Act 1987 s 2(3)(b)); (3) in connection with offences against persons within head (2) supra, with the incitement of such persons to commit offences and with offences under the Prevention of Corruption Acts 1889 to 1916 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 321) in relation to such persons (Ministry of Defence Police Act 1987 s 2(3)(ba) (added by the Anti-terrorism, Crime and Security Act 2001 s 98(1), (3))); (4) in relation to matters connected with anything done under a contract entered into by the Secretary of State for Defence for the purposes of his department or the Defence Council (Ministry of Defence Police Act 1987 s 2(3)(c)); and (5)

for the purpose of securing the unimpeded passage of any such property as is mentioned in head (1) supra (s 2(3)(d)).

'Crown property' includes property in the possession or under the control of the Crown and property which has been unlawfully removed from its possession or control: s 2(5). 'International defence property' means property which belongs to, is in the possession or under the control of or has been unlawfully removed from the possession or control of a headquarters, a defence organisation or the service authorities of a visiting force: s 2(5). 'Ordnance property' means property which: (a) belongs to an ordnance company, is in its possession or under its control or has been unlawfully removed from its possession or control; and (b) is (or was immediately before its removal) used to any extent for the purpose of, or for purposes including, the making or development of ordnance or otherwise for naval, military or air force purposes: s 2(5). 'Dockyard property' means property which: (i) belongs to a dockyard contractor, is in its possession or under its control or has been unlawfully removed from its possession or control; and (ii) is (or was immediately before its removal) used to any extent for the purpose of providing designated services or otherwise for naval, military or air force purposes: s 2(5).

27 Ibid s 2(3A)(a) (s 2(3A)-(3D) added by the Anti-terrorism, Crime and Security Act 2001 s 98(1), (4)). For the meaning of 'police area' see PARA 136 note 2 post.

28 Ministry of Defence Police Act 1987 s 2(3A)(b) (as added: see note 27 supra).

29 Ibid s 2(3A)(c) (as added: see note 27 supra). For these purposes, 'British Transport Police Force' means the constables appointed under the British Transport Commission Act 1949 s 53: Ministry of Defence Police Act 1987 s 2(5) (definition added by the Anti-terrorism, Crime and Security Act 2001 s 98(1), (6)(a)). As to the British Transport Police Force see PARA 129 post.

30 Ministry of Defence Police Act 1987 s 2(3A)(d) (as added (see note 27 supra); and substituted by the Energy Act 2004 s 69(1), Sch 14 para 5(1)(a)). As to the Civil Nuclear Constabulary see PARA 128 post.

31 Ministry of Defence Police Act 1987 s 2(3A) (as added: see note 27 supra). Members of the Ministry of Defence Police have the powers and privileges of constables for the purposes of an incident, investigation or operation by virtue of s 2(3A) (as added and amended): (1) if the request was made under s 2(3A)(a) (as added) (see the text to note 27 supra) by a constable of the police force for a police area, only in that police area (s 2(3B)(a) (as added: see note 27 supra)); (2) if it was made under s 2(3A)(b) (as added) (see the text to note 28 supra), only in Northern Ireland (s 2(3B)(b) (as so added)); (3) if it was made under s 2(3A)(c) (as added) (see the text to note 29 supra), only to the extent that those powers and privileges would in the circumstances be exercisable for those purposes by a constable of the British Transport Police Force by virtue of the British Transport Commission Act 1949 s 53(1A) (as added) (Ministry of Defence Police Act 1987 s 2(3B)(c) (as so added)); or (4) if it was made under s 2(3A)(d) (as added and substituted) (see the text to note 30 supra), only to the extent that those powers and privileges would in the circumstances be exercisable for those purposes by a constable of the Civil Nuclear Constabulary (s 2(3B)(d) (as so added; and amended by the Energy Act 2004 Sch 14 para 5(1)(b)).

32 Members of the Ministry of Defence Police have such powers and privileges only if: (1) they are in uniform or have with them documentary evidence that they are members of the Ministry of Defence Police (Ministry of Defence Police Act 1987 s 2(3D)(a) (as added: see note 27 supra)); and (2) they believe on reasonable grounds that a power of a constable which they would not have apart from s 2(3C) (as added) ought to be exercised and that, if it cannot be exercised until they secure the attendance of or a request under s 2(3A) (as added and amended) (see the text to notes 27-31 supra) by a constable who has it, the purpose for which they believe it ought to be exercised will be frustrated or seriously prejudiced (s 2(3D)(b) (as so added)).

33 In Northern Ireland they have the same powers and privileges as constables of the Police Service of Northern Ireland: see *ibid* s 2(3C)(a) (as added: see note 27 supra).

34 Ibid s 2(3C)(a) (as added: see note 27 supra).

35 Ibid s 2(3C)(b) (as added: see note 27 supra).

36 *Ie* *ibid* s 2(1)-(3D) (as added and amended): see the text to notes 1-35 supra.

37 See *ibid* s 2(4) (amended by the Anti-terrorism, Crime and Security Act 2001 ss 98(1), (5)(a), (b), 125, Sch 8 Pt 6). As to the extent of the territorial waters of the United Kingdom see the Territorial Sea Act 1987 s 1; and WATER AND WATERWAYS vol 100 (2009) PARA 31.

## UPDATE

### 120 Establishment and functions of the Ministry of Defence Police

NOTE 10--SI 1995/939 replaced: Ministry of Defence Police (Committee) Regulations 2009, SI 2009/1609.

NOTE 25--See further Counter-Terrorism Act 2008 ss 85, 87-90; and PARA 193.

NOTE 26--See further Serious Crime Act 2007 Sch 6 para 14 (references to common law offence of incitement).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(ii) The Ministry of Defence Police/121. Provision of assistance to other forces.

## **121. Provision of assistance to other forces.**

The chief constable of the Ministry of Defence Police<sup>1</sup> may, on the application of the chief officer<sup>2</sup> of any relevant force<sup>3</sup>, provide constables or other assistance for the purpose of enabling that force to meet any special demand on its resources<sup>4</sup>. Where a member of the Ministry of Defence Police is so provided for the assistance of a relevant force<sup>5</sup>, he is under the direction and control of the chief officer of that force<sup>6</sup> and he has the same powers and privileges as a member of that force<sup>7</sup>.

Where a member of the Ministry of Defence Police serves with a relevant force<sup>8</sup> under arrangements made between the chief officer<sup>9</sup> of that force and the chief constable of the Ministry of Defence Police<sup>10</sup>, that member is under the direction and control of the chief officer of the relevant force<sup>11</sup> and has the same powers and privileges as a member of that force<sup>12</sup>.

1 As to the establishment and functions of the Ministry of Defence Police, and as to the appointment of the chief constable, see PARA 120 ante.

2 'Chief officer' means the chief officer of the police force for any police area, the chief constable of the Police Service of Northern Ireland, the chief constable of the British Transport Police Force or the chief constable of the Civil Nuclear Constabulary: Ministry of Defence Police Act 1987 s 2A(4) (s 2A added by the Anti-terrorism, Crime and Security Act 2001 s 99; definition amended by the Energy Act 2004 s 69(1), Sch 14 para 5(2)(a)). For the meaning of 'chief officer of police' see PARA 105 note 7 ante. For the meaning of 'police force' see PARA 102 note 11 ante. For the meaning of 'police area' see PARA 136 note 2 post. For the meaning of 'British Transport Police Force' see PARA 120 note 29 ante; and as to the British Transport Police Force see PARA 129 post. As to the Civil Nuclear Constabulary see PARA 128 post.

3 'Relevant force' means the police force for any police area, the Police Service of Northern Ireland, the British Transport Police Force or the Civil Nuclear Constabulary: Ministry of Defence Police Act 1987 s 2A(4) (as added (see note 2 supra); definition amended by the Energy Act 2004 Sch 14 para 5(2)(b)).

4 Ministry of Defence Police Act 1987 s 2A(1) (as added: see note 2 supra).

5 Constables are not to be regarded as provided for the assistance of a relevant force under ibid s 2A (as added and amended) in a case where assistance is provided under s 2 (as amended) (see PARA 120 ante): s 2A(3) (as added: see note 2 supra).

6 Ibid s 2A(2)(a) (as added: see note 2 supra).

7 Ibid s 2A(2)(b) (as added: see note 2 supra). As to the powers and privileges of members of police forces see PARA 477 et seq post.

8 'Relevant force' means any police force for a police area in Great Britain, the Police Service of Northern Ireland, the British Transport Police Force or the Civil Nuclear Constabulary: ibid s 2B(3) (s 2B added by the Police Reform Act 2002 s 78; definition amended by the Energy Act 2004 Sch 14 para 5(3)(b); and the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 48, 49, Sch 17 Pt 2). For the meaning of 'Great Britain' see PARA 102 note 7 ante.

9 'Chief officer' means any chief officer of police of a police force for a police area in Great Britain, the chief constable of the Police Service of Northern Ireland, the chief constable of the British Transport Police Force or the chief constable of the Civil Nuclear Constabulary: Ministry of Defence Police Act 1987 s 2B(3) (as added (see note 8 supra); definition amended by the Energy Act 2004 Sch 14 para 5(3)(a); and the Serious Organised Crime and Police Act 2005 Sch 4 paras 48, 49, Sch 17 Pt 2).

10 Ministry of Defence Police Act 1987 s 2B(1) (as added: see note 8 supra).

11 Ibid s 2B(2)(a) (as added: see note 8 supra).

12 Ibid s 2B(2)(b) (as added: see note 8 supra).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(ii) The Ministry of Defence Police/122. Inspection.

## 122. Inspection.

The inspectors of constabulary<sup>1</sup> must inspect, and report to the Secretary of State<sup>2</sup> on, the efficiency and effectiveness of the Ministry of Defence Police<sup>3</sup>, and must carry out such other duties for the purposes of furthering the efficiency and effectiveness of the Ministry of Defence Police as the Secretary of State may from time to time direct<sup>4</sup>. The Secretary of State may at any time require the inspectors of constabulary to carry out an inspection of the Ministry of Defence Police and to report to him on that inspection<sup>5</sup>.

The Secretary of State must arrange for any report received by him<sup>6</sup> to be published in such manner as appears to him to be appropriate<sup>7</sup>. However, he may exclude from publication any part of a report if, in his opinion, the publication of that part would be against the interests of national security<sup>8</sup> or might jeopardise the safety of any person<sup>9</sup>. The Secretary of State must send a copy of the published report to the chief constable of the Ministry of Defence Police<sup>10</sup> and invite the chief constable to submit comments on the published report to him before such date as he may specify<sup>11</sup>. The Secretary of State must arrange for any comments submitted by the chief constable<sup>12</sup>, and any response that the Secretary of State may prepare to the published report or to any comments submitted by the chief constable<sup>13</sup>, to be published in such manner as he considers appropriate<sup>14</sup>.

1 'The inspectors of constabulary' means Her Majesty's Inspectors of Constabulary appointed under the Police Act 1996 s 54 (as amended) (see PARA 206 post); Ministry of Defence Police Act 1987 s 4B(6) (ss 4B, 4C added by the Police Reform Act 2002 s 80).

2 As to the Secretary of State see PARA 107 note 15 ante.

3 Ministry of Defence Police Act 1987 s 4B(1) (as added: see note 1 supra).

4 Ibid s 4B(4) (as added: see note 1 supra).

5 Ibid s 4B(2) (as added: see note 1 supra). Such a requirement may include a requirement for the inspection to be confined to a particular part of the Ministry of Defence Police, to particular matters or to particular activities of the Ministry of Defence Police: s 4B(3) (as so added).

6 Ie under ibid s 4B (as added): see the text to notes 1-5 supra.

7 Ibid s 4C(1) (as added: see note 1 supra).

8 Ibid s 4C(2)(a) (as added: see note 1 supra).

9 Ibid s 4C(2)(b) (as added: see note 1 supra).

10 Ibid s 4C(3)(a) (as added: see note 1 supra). As to the appointment of the chief constable of the Ministry of Defence Police see PARA 120 ante.

- 11 Ibid s 4C(3)(b) (as added: see note 1 supra).
- 12 Ibid s 4C(4)(a) (as added: see note 1 supra).
- 13 Ibid s 4C(4)(b) (as added: see note 1 supra).
- 14 Ibid s 4C(4) (as added: see note 1 supra).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(ii) The Ministry of Defence Police/123. The Defence Police Federation.

### **123. The Defence Police Federation.**

The Defence Police Federation continues to exist<sup>1</sup>, and must represent members of the Ministry of Defence Police<sup>2</sup> in all matters affecting their welfare and efficiency, other than questions of discipline affecting individuals<sup>3</sup> and questions of promotion affecting individuals<sup>4</sup>. The Federation may represent a member of the Ministry of Defence Police at any disciplinary proceedings or on an appeal from any such proceedings<sup>5</sup>.

The Federation must act through branches and regional and national committees<sup>6</sup>. The Federation and every branch and committee of it must be entirely independent of, and unassociated with, any body or person outside the police service, but may employ persons outside the police service in an administrative or advisory capacity<sup>7</sup>.

The Secretary of State may, after consultation with the management committee of the Federation, by regulations<sup>8</sup> prescribe the constitution and proceedings of the Federation or authorise the Federation to make rules concerning such matters relating to its constitution and proceedings as may be specified in the regulations and, without prejudice to the generality of that power, regulations may make provision with respect to: (1) the membership of the Federation<sup>9</sup>; (2) the raising of funds by the Federation by subscription and the use and management of funds derived from subscription<sup>10</sup>; and (3) the manner in which representations may be made by the Federation to the Ministry of Defence Police Committee<sup>11</sup> and the Secretary of State<sup>12</sup>.

1 Ministry of Defence Police Act 1987 s 3(1).

2 As to the establishment and functions of the Ministry of Defence Police see PARA 120 ante.

3 See, however, the Ministry of Defence Police Act 1987 s 3(3); and the text to note 5 infra.

4 Ibid s 3(2).

5 Ibid s 3(3). Except on an appeal to the Secretary of State or as provided by s 4 (see PARA 125 post), a member of the Ministry of Defence Police may only be represented under s 3(3) by another member of that force: s 3(4). As to the Secretary of State see PARA 107 note 15 ante. As to regulations relating to disciplinary proceedings see PARA 124 post. As to appeals against dismissal see PARA 126 post.

6 Ibid s 3(5).

7 Ibid s 3(5).

8 The power to make regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: ibid s 3(7). Any power of the Secretary of State to make regulations includes power to make different provision for different purposes: s 6A (added by the Police Reform Act 2002 s 79(4)). As to the regulations which have been made see the Ministry of Defence Police (Defence Police Federation) Regulations 1988, SI 1988/2208.

- 9 Ministry of Defence Police Act 1987 s 3(6)(a).
- 10 Ibid s 3(6)(b).
- 11 As to the establishment of the Ministry of Defence Police Committee see PARA 120 ante.
- 12 Ministry of Defence Police Act 1987 s 3(6)(c).

## UPDATE

### 123 The Defence Police Federation

NOTE 5--Ministry of Defence Police Act 1987 s 3(4) amended: Criminal Justice and Immigration Act 2008 Sch 22 para 13.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(ii) The Ministry of Defence Police/124. Regulations relating to disciplinary matters.

### 124. Regulations relating to disciplinary matters.

The Secretary of State<sup>1</sup> must by regulations made by statutory instrument<sup>2</sup> establish, or make provision for the establishment of, procedures for cases in which a member of the Ministry of Defence Police<sup>3</sup> may be dealt with by suspension, dismissal, requirement to resign, reduction in rank, reduction in rate of pay, fine, reprimand or caution<sup>4</sup>. The regulations may provide:

- 20 (1) for decisions which would otherwise fall to be taken by the Secretary of State or the chief constable of the Ministry of Defence Police<sup>5</sup> to be taken instead by a person or persons appointed in accordance with the regulations<sup>6</sup>, or by the Ministry of Defence Police Committee<sup>7</sup>; and
- 21 (2) for decisions taken by or on behalf of the Secretary of State or the chief constable of the Ministry of Defence Police to be reviewed by a person or persons appointed by or in accordance with the regulations<sup>8</sup>.

In relation to any matter as to which provision may be made by such regulations, the regulations may: (a) authorise or require provision to be made by, or confer discretionary powers on, the Secretary of State, the Ministry of Defence Police Committee, the chief constable of the Ministry of Defence Police or other persons<sup>9</sup>; or (b) authorise or require the delegation by any person of functions conferred on that person by or under the regulations<sup>10</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 Any statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: Ministry of Defence Police Act 1987 s 3A(4) (s 3A added by the Police Reform Act 2002 s 79(1)). Any power of the Secretary of State to make regulations includes power to make different provision for different purposes: Ministry of Defence Police Act 1987 s 6A (added by the Police Reform Act 2002 s 79(4)). As to the regulations which have been made see the Ministry of Defence Police (Conduct) Regulations 2004, SI 2004/653; and the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004, SI 2004/654.

3 As to the establishment and functions of the Ministry of Defence Police see PARA 120 ante.

4 Ministry of Defence Police Act 1987 s 3A(1) (as added: see note 2 supra). As to appeals against dismissal etc see s 4A (as added); and PARA 126 post.



- 5 As to the appointment of the chief constable of the Ministry of Defence Police see PARA 120 ante.
- 6 Ministry of Defence Police Act 1987 s 3A(2)(a)(i) (as added: see note 2 supra).
- 7 Ibid s 3A(2)(a)(ii) (as added: see note 2 supra). As to the Ministry of Defence Police Committee see PARA 120 ante.
- 8 Ibid s 3A(2)(b) (as added: see note 2 supra).
- 9 Ibid s 3A(3)(a) (as added: see note 2 supra).
- 10 Ibid s 3A(3)(b) (as added: see note 2 supra).

## UPDATE

### 124 Regulations relating to disciplinary matters

TEXT AND NOTES 1-8---Ministry of Defence Police Act 1987 s 3A(1), (2) substituted: Criminal Justice and Immigration Act 2008 Sch 22 para 14.

NOTE 2--SI 2004/653, SI 2004/654 replaced: Ministry of Defence Police (Conduct) Regulations 2009, SI 2009/3069.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(ii) The Ministry of Defence Police/125. Representation of the Ministry of Defence Police at disciplinary proceedings.

### 125. Representation of the Ministry of Defence Police at disciplinary proceedings.

On the hearing of a disciplinary charge against a member of the Ministry of Defence Police<sup>1</sup> of the rank of chief superintendent or below, the punishment of dismissal, requirement to resign or reduction in rank may not be awarded unless he has been given an opportunity to elect to be legally represented at the hearing<sup>2</sup>. Where a member of the Ministry of Defence Police so elects, he may be represented at the hearing, at his option, either by counsel or by a solicitor<sup>3</sup>. Except in a case where a member has been given an opportunity to elect to be legally represented and has so elected, he may only be represented at the hearing of a disciplinary charge by another member of the force<sup>4</sup>.

The Secretary of State<sup>5</sup> may by regulations<sup>6</sup> specify: (1) a procedure for notifying a member of the Ministry of Defence Police of the effect of the above provisions<sup>7</sup>; (2) when he is to be so notified and when he is to give notice whether or not he wishes to be legally represented at the hearing<sup>8</sup>.

If a member of the Ministry of Defence Police fails without reasonable cause to give notice in accordance with the regulations that he wishes to be legally represented<sup>9</sup>, or gives notice in accordance with the regulations that he does not wish to be legally represented<sup>10</sup>, any punishment<sup>11</sup> may be awarded without his being legally represented<sup>12</sup>.

If a member of the Ministry of Defence Police has given notice in accordance with the regulations that he wishes to be legally represented, the case against him may be presented by counsel or a solicitor whether or not he is actually so represented<sup>13</sup>.

1 As to the establishment and functions of the Ministry of Defence Police see PARA 120 ante.

2 Ministry of Defence Police Act 1987 s 4(1). As to representation by the Defence Police Federation see PARA 123 ante. As to appeals against dismissal etc see PARA 126 post.

- 3 Ibid s 4(2).
- 4 Ibid s 4(3).
- 5 As to the Secretary of State see PARA 107 note 15 ante.
- 6 Such regulations must be made by statutory instrument, and a statutory instrument containing any such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: Ministry of Defence Police Act 1987 s 4(5). Any power of the Secretary of State to make such regulations includes power to make different provision for different purposes: s 6A (added by the Police Reform Act 2002 s 79(4)). As to the regulations which have been made see the Ministry of Defence Police (Conduct) Regulations 2004, SI 2004/653.
- 7 Ministry of Defence Police Act 1987 s 4(4)(a).
- 8 Ibid s 4(4)(b).
- 9 Ibid s 4(6)(a).
- 10 Ibid s 4(6)(b).
- 11 Ie any such punishment as is mentioned in ibid s 4(1) (see the text to notes 1-2 supra).
- 12 Ibid s 4(6).
- 13 Ibid s 4(7).

## UPDATE

### **125 Representation of the Ministry of Defence Police at disciplinary proceedings**

TEXT AND NOTES---Ministry of Defence Police Act 1987 s 4 substituted: Criminal Justice and Immigration Act 2008 Sch 22 para 15.

NOTE 6--SI 2004/653 replaced: Ministry of Defence Police (Conduct) Regulations 2009, SI 2009/3069.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(ii) The Ministry of Defence Police/126. Appeals against dismissal etc.

### **126. Appeals against dismissal etc.**

A member of the Ministry of Defence Police<sup>1</sup> who is dismissed, required to resign or reduced in rank by a decision taken in proceedings under regulations relating to disciplinary matters<sup>2</sup> may appeal to an appeals tribunal<sup>3</sup>. However, this provision does not apply in the case of a person who has a right to apply to some other person for a review of the decision; and in that case that person may appeal to an appeals tribunal from any decision of that other person as a result of which he is dismissed, required to resign or reduced in rank<sup>4</sup>.

The Secretary of State<sup>5</sup> may by regulations made by statutory instrument<sup>6</sup>: (1) make provision equivalent, subject to such modifications as the Secretary of State thinks fit, to that made<sup>7</sup> in relation to police appeals tribunals<sup>8</sup>; (2) make provision as to procedure on appeals<sup>9</sup> to appeals tribunals<sup>10</sup>; and (3) make provision enabling an appeals tribunal to require any person to attend a hearing and to give evidence or produce documents<sup>11</sup>.

Where an appeals tribunal allows an appeal it may, if it considers that it is appropriate to do so, make an order dealing with the appellant in a way which appears to the tribunal to be less severe than the way in which he was dealt with by the decision appealed against<sup>12</sup> and is a way in which he could have been dealt with by the person who made the decision<sup>13</sup>.

1 As to the establishment and functions of the Ministry of Defence Police see PARA 120 ante.

2 The regulations made in accordance with the Ministry of Defence Police Act 1987 s 3A (as added): see PARA 124 ante.

3 Ibid s 4A(1) (s 4A added by the Police Reform Act 2002 s 79(2)). 'An appeals tribunal' means a tribunal constituted in accordance with regulations under the Ministry of Defence Police Act 1987 s 4A(3) (as added) (see the text to notes 5-11 infra): s 4A(7) (as so added).

4 Ibid s 4A(2) (as added: see note 3 supra).

5 As to the Secretary of State see PARA 107 note 15 ante.

6 Any statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: Ministry of Defence Police Act 1987 s 4A(6) (as added: see note 3 supra). Any power of the Secretary of State to make such regulations includes power to make different provision for different purposes: s 6A (added by the Police Reform Act 2002 s 79(4)). As to the regulations which have been made see the Ministry of Defence Police Appeal Tribunals Regulations 2004, SI 2004/652.

7 The by any provision of the Police Act 1996 s 85, Sch 6 (as amended): see PARAS 301-304 post.

8 Ministry of Defence Police Act 1987 s 4A(3)(a) (as added: see note 3 supra).

9 The appeals under ibid s 4A (as added).

10 Ibid s 4A(3)(b) (as added: see note 3 supra).

11 Ibid s 4A(3)(c) (as added: see note 3 supra). Regulations made by virtue of s 4A(3)(c) (as added) may, in particular, apply the Local Government Act 1972 s 250(2) and (3) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105) with such modifications as may be set out in the regulations: Ministry of Defence Police Act 1987 s 4A(4) (as so added).

12 Ibid s 4A(5)(a) (as added: see note 3 supra).

13 Ibid s 4A(5)(b) (as added: see note 3 supra).

## UPDATE

### 126 Appeals against dismissal etc

TEXT AND NOTES---Ministry of Defence Police Act 1987 s 4A substituted: Criminal Justice and Immigration Act 2008 Sch 22 para 16.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 6--SI 2004/652 replaced: Ministry of Defence Police Appeals Tribunals Regulations 2009, SI 2009/3070.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(ii) The Ministry of Defence Police/127. Offences.

### 127. Offences.

Any person who with intent to deceive impersonates a member of the Ministry of Defence Police<sup>1</sup>, or makes any statement or does any act calculated falsely to suggest that he is such a member, is guilty of an offence<sup>2</sup>.

Any person is guilty of an offence if, not being a member of the Ministry of Defence Police, he: (1) wears any article of the uniform<sup>3</sup> of the Ministry of Defence Police in circumstances where it gives him an appearance so nearly resembling that of a member as to be calculated to deceive<sup>4</sup>; (2) has in his possession any article of uniform of the Ministry of Defence Police, unless he proves that he obtained possession of that article lawfully and has possession of it for a lawful purpose<sup>5</sup>.

Any person who causes, or attempts to cause, or does any act calculated to cause, disaffection amongst the members of the Ministry of Defence Police, or induces or attempts to induce, or does any act calculated to induce, any member of the Ministry of Defence Police to withhold his services or to commit breaches of discipline, is guilty of an offence<sup>6</sup>.

1 As to the establishment and functions of the Ministry of Defence Police see PARA 120 ante.

2 Ministry of Defence Police Act 1987 s 5(1). The penalty for such an offence is, on summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both: s 5(1). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

3 'Article of uniform' means any article of uniform or any distinctive badge or mark or document of identification usually issued to members of the Ministry of Defence Police, or any thing having the appearance of such an article, badge, mark or document: Ministry of Defence Police Act 1987 s 5(4).

4 Ibid s 5(2). The penalty for such an offence is on summary conviction a fine not exceeding level 3 on the standard scale: s 5(2).

5 Ibid s 5(3). The penalty for such an offence is on summary conviction a fine not exceeding level 1 on the standard scale: s 5(3).

6 Ibid s 6. The penalty for such an offence is: (1) on summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both (s 6(a)); (2) on conviction on indictment, imprisonment for a term not exceeding two years or a fine, or both (s 6(b)). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

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### **(iii) Civil Nuclear Constabulary**

#### **128. Civil Nuclear Constabulary.**

The Energy Act 2004<sup>1</sup> establishes the Civil Nuclear Police Authority<sup>2</sup> with the function of securing the maintenance of an efficient and effective constabulary, known as the Civil Nuclear Constabulary<sup>3</sup>. The primary function of the constabulary is the protection of licensed nuclear sites<sup>4</sup> which are not used wholly or mainly for defence purposes<sup>5</sup>, and safeguarding nuclear material<sup>6</sup> in Great Britain<sup>7</sup> and elsewhere<sup>8</sup>. The constabulary has a chief constable appointed by the Authority and there may be one or more assistant chief constables<sup>9</sup>. Members of the constabulary are appointed by the Authority and are employees of the Authority under the direction and control of the chief constable<sup>10</sup>. In specified places, a member of the constabulary has the powers and privileges of a constable<sup>11</sup>. The Authority may make provision about the government, administration or conditions of service of the constabulary or its members<sup>12</sup>, and arrangements may be made for members of the constabulary to serve with other forces<sup>13</sup> or the Serious Organised Crime Agency<sup>14</sup>. The constabulary is subject to inspection by Her Majesty's Inspectors of Constabulary<sup>15</sup>, and the Secretary of State may give the Authority directions calculated to promote the efficiency and effectiveness of the constabulary<sup>16</sup>.

The Secretary of State may approve a body, known as the Civil Nuclear Police Federation, with the function of representing members of the constabulary in all matters affecting their welfare and efficiency including disciplinary proceedings<sup>17</sup>. The Secretary of State may also approve one or more rank-related associations to represent in such matters members of the constabulary of specified ranks who are not members of the Civil Nuclear Police Federation or of another rank-related association<sup>18</sup>. There are provisions relating to procedure at disciplinary proceedings<sup>19</sup> and to trade union membership<sup>20</sup>.

The offences under the Police Act 1996 relating to assaults on, and the obstruction of, constables in the execution of their duty<sup>21</sup> apply in the case of members of the constabulary, as do those relating to impersonation of member of a police force<sup>22</sup> and causing disaffection<sup>23</sup>.

1    Ie the Energy Act 2004 Pt 1 Ch 3 (ss 51-71).

2    See *ibid* s 51, Sch 10. As to the Civil Nuclear Police Authority and the Civil Nuclear Constabulary see further FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1520 et seq.

3    See *ibid* s 52(1). See note 2 *supra*.

4    'Licensed nuclear site' means a site in respect of which a nuclear site licence is or is required to be in force: *ibid* s 71(1).

5    *Ibid* s 52(2)(a).

6    'Nuclear material' means: (1) any fissile material in the form of: (a) uranium metal, alloy or chemical compound; or (b) plutonium metal, alloy or chemical compound; (2) any other fissile material prescribed by regulations made by the Secretary of State: *ibid* s 71(1). As to the Secretary of State see PARA 107 note 15 *ante*.

7    For the meaning of 'Great Britain' see PARA 102 note 7 *ante*.

8    Energy Act 2004 s 52(2)(b).

9    See *ibid* s 53, Sch 11.

10   See *ibid* s 55.

11   See *ibid* s 56. As to the powers and privileges of a constable in relation to keeping the peace see PARA 477 et seq *post*.

12   See *ibid* s 58.

13   See *ibid* s 59. The other forces with which such arrangements may be made are: a police force for a police area in Great Britain (see PARA 136 et seq *post*); the Police Service of Northern Ireland; the British Transport Police Force (see PARA 129 *post*); or the Ministry of Defence Police (see PARA 120 et seq *ante*): see s 59(3) (amended by the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 197, 198(b), Sch 17 Pt 2). For the meaning of 'police force' see PARA 102 note 11 *ante*. For the meaning of 'police area' see PARA 136 note 2 *post*.

- 14 See the Energy Act 2004 s 59A (added by the Serious Organised Crime and Police Act 2005 Sch 4 paras 197, 199). As to the Serious Organised Crime Agency see PARA 430 et seq post.
- 15 See the Energy Act 2004 s 62. As to Her Majesty's Inspectors of Constabulary see PARA 206 post.
- 16 See *ibid* s 63, Sch 13.
- 17 See *ibid* s 64.
- 18 See *ibid* s 65.
- 19 See *ibid* s 66.
- 20 See *ibid* s 67.
- 21 Ie the offences under the Police Act 1996 s 89(1) and (2): see PARA 481 post.
- 22 Ie under *ibid* s 90: see PARA 481 post.
- 23 See the Energy Act 2004 s 68. As to the offence of causing disaffection see the Police Act 1996 s 91; and PARA 481 post.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(iv) British Transport Police Force/129. British Transport Police Force.

#### **(iv) British Transport Police Force**

##### **129. British Transport Police Force.**

The Railways and Transport Safety Act 2003<sup>1</sup> establishes the British Transport Police Authority<sup>2</sup>. In performing its functions, the Authority must aim to ensure the efficient and effective policing of the railways<sup>3</sup> and to this end must secure the maintenance of an efficient and effective police force, known as the British Transport Police Force<sup>4</sup>. The Authority must appoint a chief constable of the police force<sup>5</sup>, a deputy chief constable<sup>6</sup> and at least one assistant chief constable<sup>7</sup>. The Authority appoints and employs constables who are under the direction and control of the chief constable<sup>8</sup>, and in specified places those constables have all the powers and privileges of a constable<sup>9</sup>. The chief constable may appoint special constables who are also under his direction and control and may be dismissed by him<sup>10</sup>. The chief constable may also appoint cadets to undergo training with a view to becoming constables of the force<sup>11</sup>. The Authority may employ civilian employees to assist the force<sup>12</sup>.

With limited exceptions, a constable or cadet may not be a member of a trade union<sup>13</sup>. The Authority may make regulations about a body to be known as the British Transport Police Federation having the function of representing persons employed in the service of the police force in matters affecting their welfare and efficiency<sup>14</sup>.

The British Transport Police Authority may enter into police services agreements with any person who provides railway services<sup>15</sup> for the provision to such person of police services by the police force<sup>16</sup>. The Authority may provide advice or assistance, or arrange for the police force to provide advice or assistance, to a body which has responsibilities in relation to the policing of a railway outside Great Britain<sup>17</sup>. The Secretary of State may make regulations about the treatment by the Authority of a constable who serves outside the force<sup>18</sup>.

Where the police force investigates an offence, the chief constable may institute criminal proceedings in respect of the offence<sup>19</sup>.

The Secretary of State may issue codes of practice relating to the performance by the Authority or the chief constable of its or his functions<sup>20</sup>. The Secretary of State has power to appoint a person to inquire into a matter connected with the police force<sup>21</sup>, and the force is subject to inspection by Her Majesty's Inspectors of Constabulary<sup>22</sup>.

The offences under the Police Act 1996 relating to assaults on, and the obstruction of, constables in the execution of their duty<sup>23</sup> apply in the case of constables of the police force, as does the offence<sup>24</sup> of impersonation of a constable<sup>25</sup>.

1 See the Railways and Transport Safety Act 2003 Pt 3 (ss 18-77).

2 See *ibid* s 18, Sch 4. As to the British Transport Police Authority and the British Transport Police Force see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 282-283.

3 See *ibid* s 19. 'Railway' means a railway within the meaning given by the Transport and Works Act 1992 s 67(1) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 302), and a tramway within the meaning given by that provision: Railways and Transport Safety Act 2003 s 75(1).

4 See *ibid* s 20. The Authority must set yearly policing objectives (see ss 50, 51, 53, 54) and issue a railways policing plan (see s 52). Every three years the authority must also issue a strategy plan: see s 55. The Authority must issue an annual report (see s 57) and such other reports as the Secretary of State may direct (s 58) and must consult with the public and other bodies concerning its functions (see s 62). As to the Secretary of State see PARA 107 note 15 ante.

5 See *ibid* s 21. The chief constable must submit an annual report to the Authority (see s 56) and such other reports as the Secretary of State may direct (see s 58). The chief constable must supply the Secretary of State with crime statistics if required to do so: see s 59.

6 See *ibid* s 22.

7 See *ibid* s 23.

8 See *ibid* s 24. The Authority may make regulations about the government, administration and conditions of constables or other persons employed in the service of the police force: see ss 36, 40-44. A constable of the British Transport Police Force is not entitled to bring a complaint of unfair dismissal under the Employment Rights Act 1996: see *Spence v British Railways Board* [2001] ICR 232, [2000] All ER (D) 1956, EAT; and EMPLOYMENT vol 39 (2009) PARA 141.

9 See the Railways and Transport Safety Act 2003 s 31. As to the powers and privileges of a constable see PARA 477 et seq post.

10 See *ibid* s 25. The Police Act 1996 s 88(1)-(5) (liability for wrongful act of constable: see PARA 105 ante) has effect in relation to such special constables: see the Railways and Transport Safety Act 2003 s 25(5). The Authority may make regulations about the government, administration and conditions of special constables: see ss 37, 40-44.

11 See *ibid* s 26. The Authority may make regulations about the government, administration and conditions of cadets: see ss 38, 40-42.

12 See *ibid* s 27.

13 See *ibid* s 30. 'Trade union' has the meaning given in the Trade Union and Labour Relations (Consolidation) Act 1992 s 1 (see EMPLOYMENT vol 40 (2009) PARA 846): Railways and Transport Safety Act 2003 s 30.

14 See *ibid* ss 39-42.

15 'Railway services' means the management or control, or participation in the management or control, of all or any part or aspect of a railway or railway property; and 'railway property' means a track, a network, a station, a light maintenance depot, a railway vehicle on a network or tramway, rolling stock on a network or tramway, a train used on a network, and a vehicle used on a tramway: *ibid* s 75(1).

16 See *ibid* ss 33, 35. The Secretary of State may require such an agreement to be made in certain circumstances: see s 34. The Secretary of State may make regulations under the Police Act 1996 s 53A (as added) (regulation of procedure and practice for purpose of facilitating inter-force co-operation: see PARA 196 post) which have effect in relation to the British Transport Police Force: see the Railways and Transport Safety

Act 2003 s 45. As to the provision by the British Transport Police Authority of assistance in policing the channel tunnel see PARA 130 post.

17 See *ibid* s 70. For the meaning of 'Great Britain' see PARA 102 note 7 ante.

18 See *ibid* s 49. The regulations must, in particular, make provision similar to that of the Police Act 1996 s 97 (as amended) (service by police officer outside his force: see PARA 428 post): see the Railways and Transport Safety Act 2003 s 49(2).

19 See *ibid* s 32.

20 See *ibid* ss 47, 48.

21 See *ibid* ss 60, 61.

22 See *ibid* ss 63-67. As to Her Majesty's Inspectors of Constabulary see PARA 206 post.

23 In the offences under the Police Act 1996 s 89(1) and (2): see PARA 481 post.

24 In under *ibid* s 90: see PARA 481 post.

25 See the Railways and Transport Safety Act 2003 s 68.

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## **(v) Policing of the Channel Tunnel System**

### **130. The policing of the Channel Tunnel system.**

The policing of the Channel Tunnel system<sup>1</sup> is to be undertaken by constables<sup>2</sup> under the direction and control of the chief constable of police maintained for the Kent police area<sup>3</sup>. The British Transport Police Authority<sup>4</sup> may, on the application of the chief constable of the police force<sup>5</sup> maintained for the Kent police area, provide constables or other assistance for the policing of the tunnel system<sup>6</sup>. Any constable so provided is, when he is engaged in the policing of the tunnel system, under the direction and control of the chief constable of the police force maintained for the Kent police area and has the same powers as a constable who is a member of that force<sup>7</sup>. The Concessionaires<sup>8</sup> must make to the Kent police authority such payments in respect of the policing of the tunnel system<sup>9</sup>, and provide for use in connection with the policing of the system such accommodation and facilities<sup>10</sup>, as the Concessionaires and that authority may agree or as may, in default of agreement, be determined by the Secretary of State<sup>11</sup>. The Kent police authority may make to the British Transport Police Authority such payments in respect of any assistance so provided as the authorities may agree or as may, in default of agreement, be determined by the Secretary of State<sup>12</sup>.

1 'The tunnel system' means the tunnel rail link, together with its associated works, facilities and installations, constructed in pursuance of the Treaty, and incorporating: (1) tunnels under the English Channel between Cheriton, Folkestone, in Kent and Fréthun in the Pas de Calais, comprising two main tunnels capable of carrying both road traffic on shuttle trains and rail traffic, and an associated service tunnel; (2) two terminal areas, for controlling access to and egress from the tunnels, located at the portals of the tunnels in the vicinity of Cheriton, Folkestone and Fréthun respectively; (3) a service and maintenance area at the Old Dover Colliery site; (4) an inland clearance depot at Ashford, in Kent, for the accommodation, in connection with the application to them of customs and other controls, of freight vehicles which have been or are to be conveyed through the tunnels on shuttle services; (5) necessary links with the road and rail networks of each country; and (6) the fixed and movable equipment needed for the operation of the tunnels and the associated works, facilities and installations mentioned in heads (2)-(5) supra or for the operation of shuttle services using the tunnels: Channel Tunnel Act 1987 s 1(7).



'The Treaty' means the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link (Canterbury, 12 February 1986), together with its supplementary protocols and arrangements; and the Concession between Her Majesty's government in the United Kingdom and the government of the French Republic on the one hand and private Concessionaires on the other hand which, in accordance with art 1 of the Treaty, regulates, together with the Treaty, the construction and operation of the Channel fixed link referred to in art 1: Channel Tunnel Act 1987 s 1(1), (4).

2 As to the office of constable see PARA 101 et seq ante.

3 Channel Tunnel Act 1987 s 14(1) (amended by the Police and Magistrates' Courts Act 1994 s 44, Sch 5 para 38). As to chief constables see PARA 178 et seq post. For the meaning of 'police area' see PARA 136 note 2 post.

The Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813 (as amended) gives qualified effect to the Protocol between the United Kingdom and French Governments Concerning Frontier Controls and Policing, Co-operation in Criminal Justice, Public Safety and Mutual Assistance Relating to the Channel Fixed Link. The order includes provision for the extension of English criminal jurisdiction to conduct in the United Kingdom control zone which, if taking place in England, would constitute an offence under a frontier control enactment. A presumption is created as to jurisdiction over offences committed in the tunnel system where it is uncertain on which side of the frontier they were committed. Further provision is made enabling constables and customs officers to take into temporary custody persons arrested by the latter in the French control zone. See also the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405 (as amended); the Channel Tunnel (Security) Order 1994, SI 1994/570 (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 324.

4 As to the British Transport Police Authority see PARA 129 ante; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 282.

5 For the meaning of 'police force' see PARA 102 note 11 ante.

6 Channel Tunnel Act 1987 s 14(2) (amended by the Police and Magistrates' Courts Act 1994 Sch 5 para 38(1), (2); and the British Transport Police (Transitional and Consequential Provisions) Order 2004, SI 2004/1573, art 12(1)(d)).

7 Channel Tunnel Act 1987 s 14(3) (amended by the Police and Magistrates' Courts Act 1994 Sch 5 para 38(1), (2)). As to the powers of constables generally see PARA 477 et seq post.

8 The 'Concessionaires' means the person or persons who have for the time being the function of constructing and operating or (as the case may be) of operating the tunnel system: see the Channel Tunnel Act 1987 ss 1(8), 49(1). For the meaning of 'person' see PARA 110 note 6 ante.

9 Ibid s 14(4)(a) (s 14(4) amended by the Police and Magistrates' Courts Act 1994 Sch 5 para 38(1), (3)). For the meaning of 'police authority' see PARA 139 note 1 post.

10 Channel Tunnel Act 1987 s 14(4)(b).

11 Ibid s 14(4) (as amended: see note 9 supra). As to the Secretary of State see PARA 107 note 15 ante.

12 Ibid s 14(5) (amended by the Police and Magistrates' Courts Act 1994 Sch 5 para 38(1), (3); the Transport Act 2000 s 217, Sch 18 para 6(1), (3); and the British Transport Police (Transitional and Consequential Provisions) Order 2004, SI 2004/1573, art 12(1)(d)).

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## **(vi) Harbour Constables**

### **131. Harbour constables.**

On the nomination of harbour, dock or pier undertakers<sup>1</sup> whose special Act incorporates the harbour and dock police provisions of the Harbours, Docks and Piers Clauses Act 1847<sup>2</sup>, any two justices may appoint persons to be special constables within the limits of the harbour, dock or

pier or premises of the undertakers and within one mile of the same<sup>3</sup>. A constable so appointed must be attested<sup>4</sup> before two justices of the peace and has jurisdiction in the whole of the area for which he is appointed<sup>5</sup>. Any two justices may dismiss a harbour constable<sup>6</sup>.

1 As to such undertakers generally see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 602.

2 See the Harbours, Docks and Piers Clauses Act 1847 ss 79, 80: see the text and notes 3-6 infra; and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 759. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply when incorporated in a special Act: see s 1; and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 602.

3 Ibid s 79. See further PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 759.

Similar provision is made in relation to the Port of London by the Port of London Act 1968 Pt X (ss 154-160) (as amended): see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 759.

4 As to attestation as a constable see PARA 103 ante.

5 See the Harbours, Docks and Piers Clauses Act 1847 s 79.

6 Ibid s 80. See further PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 759.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(vii) Civil Aviation and Airport Constables/132. Civil aviation and airport constables.

## **(vii) Civil Aviation and Airport Constables**

### **132. Civil aviation and airport constables.**

Persons nominated by the Secretary of State<sup>1</sup> may be appointed under the Civil Aviation Act 1982 by any two justices of the peace to be special constables on any premises vested in the Secretary of State or under his control<sup>1</sup>.

The Aviation Security Act 1982 enables the regular police to take over the policing of designated civil airports from the aerodrome constabulary<sup>2</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 See the Civil Aviation Act 1982 s 57(1); and AIR LAW vol 2 (2008) PARA 323.

3 See the Aviation Security Act 1982 Pt III (ss 25-31) (as amended); and AIR LAW vol 2 (2008) PARAS 324-328. As to the policing and protection of aerodromes see AIR LAW vol 2 (2008) PARAS 322-352.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(viii) Park Constables/133. Park constables.

## **(viii) Park Constables**

### **133. Park constables.**

With respect to any public park or pleasure ground provided by a local authority<sup>1</sup>, being a park or ground to which the recreation ground provisions<sup>2</sup> of the Public Health Acts Amendment Act

1907 have been applied<sup>3</sup>, the local authority may appoint officers for securing the observation of those provisions and of regulations and byelaws made under them and may procure such officers to be attested<sup>4</sup> as constables<sup>5</sup>. The jurisdiction of such a constable is limited to the purposes for which he is appointed, and his authority as a constable does not appear to extend to the enforcement of the general law. He may only act as a constable if in uniform or provided with a warrant<sup>6</sup>. Similar provisions are to be found in a number of local Acts<sup>7</sup>. The Parks Regulation Act 1872 contains powers to appoint constables in relation to certain parks and other land for the time being vested in or under the control or management of the Secretary of State<sup>8</sup>.

1 For the meaning of 'local authority' in this context see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 555.

2 See the Public Health Acts Amendment Act 1907 Pt VI (ss 76-77) (as amended): see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARAS 558, 559.

3 The Public Health Act 1961 s 52(1) (as amended) provides that these provisions are in force throughout the district of every local authority.

4 As to attestation as a constable see PARA 103 ante.

5 See the Public Health Acts Amendment Act 1907 s 77.

6 Ibid s 77.

7 See eg the Epping Forest Act 1878 s 43; the London County Council (General Powers) Act 1892 s 39 (ferries); the London County Council (General Powers) Act 1919 s 9(3)(d) (Temple station); the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 s 1, Schedule, art 18 and the County of Merseyside Act 1980 s 105 (Mersey Tunnel law enforcement officers). As to the application of local Act provisions see the Local Government Act 1972 s 262 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 14.

8 See the Parks Regulation Act 1872; the Parks Regulation (Amendment) Act 1926 s 1 (as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 561. As to the Secretary of State see PARA 107 note 15 ante.

## UPDATE

### 133 Park constables

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/ (ix) University Constables/134. University constables.

## (ix) University Constables

### 134. University constables.

The chancellor or vice-chancellor of the University of Oxford or the University of Cambridge may appoint persons to be constables in and for their respective universities<sup>1</sup>. A constable so appointed must be attested<sup>2</sup> before the chancellor or vice-chancellor and has the jurisdiction of a constable within the precincts of, and within four miles of, the university for which he is appointed<sup>3</sup>. The power of dismissal rests with the chancellor or vice-chancellor<sup>4</sup>.

1 Universities Act 1825 s 1.

2 As to attestation as a constable see PARA 103 ante.

3 Universities Act 1825 s 1. A pro vice-chancellor or deputy vice-chancellor may execute the powers in the absence of the chancellor and vice-chancellor: s 2.

4 Ibid s 1.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/ (5) OTHER BODIES OF CONSTABLES/(x) Persons having the Powers of Constables/135. Persons having the powers of constables for limited purposes.

## **(x) Persons having the Powers of Constables**

### **135. Persons having the powers of constables for limited purposes.**

Certain persons who are not attested and do not hold the office of constable enjoy by statute the authority of a constable for limited purposes. A water bailiff appointed by a water authority has the powers and privileges of, and is deemed to be, a constable for the purpose of the enforcement of the provisions of the Salmon and Freshwater Fisheries Act 1975<sup>1</sup>. A fishery officer has similar powers in relation to the enforcement of byelaws for the regulation of sea fisheries<sup>2</sup>. A prison officer acting as such has the powers, authority, protection and privileges of a constable<sup>3</sup>.

1 See the Salmon and Freshwater Fisheries Act 1975 s 36(1); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 934.

2 See the Sea Fisheries Regulation Act 1966 s 10(3); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 1012.

3 See the Prison Act 1952 s 8; and PRISONS vol 36(2) (Reissue) PARA 516. As to the powers of a person authorised to transfer a United Kingdom prisoner to give evidence or assist an investigation overseas see the Criminal Justice (International Co-operation) Act 1990 s 5(5); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1412.

## **UPDATE**

### **135 Persons having the powers of constables for limited purposes**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(1) POLICE AREAS AND AUTHORITIES/(i) Police Areas/136. Police areas.

## **2. POLICE ADMINISTRATION**

## **(1) POLICE AREAS AND AUTHORITIES**

### **(i) Police Areas**

#### **136. Police areas.**

England and Wales<sup>1</sup> is divided into police areas<sup>2</sup> comprising: (1) Avon and Somerset<sup>3</sup>; (2) Bedfordshire<sup>4</sup>; (3) Cambridgeshire<sup>5</sup>; (4) Cheshire<sup>6</sup>; (5) Cleveland<sup>7</sup>; (6) Cumbria<sup>8</sup>; (7) Derbyshire<sup>9</sup>; (8) Devon and Cornwall<sup>10</sup>; (9) Dorset<sup>11</sup>; (10) Durham<sup>12</sup>; (11) Essex<sup>13</sup>; (12) Gloucestershire<sup>14</sup>; (13) Greater Manchester<sup>15</sup>; (14) Hampshire<sup>16</sup>; (15) Hertfordshire<sup>17</sup>; (16) Humberside<sup>18</sup>; (17) Kent<sup>19</sup>; (18) Lancashire<sup>20</sup>; (19) Leicestershire<sup>21</sup>; (20) Lincolnshire<sup>22</sup>; (21) Merseyside<sup>23</sup>; (22) Norfolk<sup>24</sup>; (23) Northamptonshire<sup>25</sup>; (24) Northumbria<sup>26</sup>; (25) North Yorkshire<sup>27</sup>; (26) Nottinghamshire<sup>28</sup>; (27) South Yorkshire<sup>29</sup>; (28) Staffordshire<sup>30</sup>; (29) Suffolk<sup>31</sup>; (30) Surrey<sup>32</sup>; (31) Sussex<sup>33</sup>; (32) Thames Valley<sup>34</sup>; (33) Warwickshire<sup>35</sup>; (34) West Mercia<sup>36</sup>; (35) West Midlands<sup>37</sup>; (36) West Yorkshire<sup>38</sup>; (37) Wiltshire<sup>39</sup>; (38) Dyfed Powys<sup>40</sup>; (39) Gwent<sup>41</sup>; (40) North Wales<sup>42</sup>; (41) South Wales<sup>43</sup>; (42) the metropolitan police district<sup>44</sup>; and (43) the City of London police area<sup>45</sup>.

The relevant police authority must maintain a police force<sup>46</sup> for every police area listed in heads (1) to (41) above<sup>47</sup>. The Metropolitan Police Authority<sup>48</sup> must maintain a police force for the metropolitan police district<sup>49</sup>, and the Common Council for the City of London must maintain a police force for the City of London police area<sup>50</sup>.

1 For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante.

2 Police Act 1996 s 1(1). 'Police area' means a police area provided for by s 1 (as amended): 101(1). This definition is applied to any other Act, unless the contrary intention appears: see the Interpretation Act 1978 s 5, Sch 1 (amended by the Police Act 1996 s 103, Sch 7 para 32). The areas in heads (1)-(41) in the text are subject to any amendment made by an order under the Police Act 1996 s 32 (see PARA 197 post), the Local Government Act 1972 s 58 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 86) or the Local Government Act 1992 s 17 (as amended) (see ELECTIONS AND REFERENDUMS): see the Police Act 1996 s 1(2)(a). References in heads (1)-(41) in the text to any local government area are to that area as it is for the time being: s 1(3) (amended by the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 69, Sch 34 Pt VII). For the purposes of the application of the Police Act 1996 Pt I (ss 1-35) (as amended) to the Isles of Scilly, the Isles are to be treated as if they were a county; and references to the council of a county are to be construed as references to the Council of the Isles of Scilly: s 35. As to local government in the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

3 The Police Act 1996 describes the extent of this area as the county of Somerset and the non-metropolitan districts of Bath and North East Somerset, Bristol, North West Somerset and South Gloucestershire: see s 1(2)(a), Sch 1.

4 The Police Act 1996 describes the extent of this area as the county of Bedfordshire and the non-metropolitan district of Luton: see Sch 1.

5 The Police Act 1996 describes the extent of this area as the county of Cambridgeshire and the non-metropolitan district of Peterborough: see Sch 1 (amended by the Cambridgeshire (Police Area and Authority) Order 1997, SI 1997/1846, art 3).

6 The Police Act 1996 describes the extent of this area as the county of Cheshire and the non-metropolitan districts of Halton and Warrington: see Sch 1 (amended by the Cheshire (Police Area and Authority) Order 1997, SI 1997/1845, art 3).

7 The Police Act 1996 describes the extent of this area as the non-metropolitan districts of Hartlepool, Middlesbrough, Redcar and Cleveland, and Stockton-on-Tees: see Sch 1.

8 The Police Act 1996 describes the extent of this area as the county of Cumbria: see Sch 1.

9 The Police Act 1996 describes the extent of this area as the county of Derbyshire and the non-metropolitan district of Derby: see Sch 1.

10 The Police Act 1996 describes the extent of this area as the counties of Devon and Cornwall, the non-metropolitan districts of Plymouth and Torbay and the Isles of Scilly: see Sch 1 (amended by the Devon and Cornwall (Police Area and Authority) Order 1997, SI 1997/1849, art 3).

11 The Police Act 1996 describes the extent of this area as the county of Dorset and the non-metropolitan districts of Bournemouth and Poole: see Sch 1.

12 The Police Act 1996 describes the extent of this area as the county of Durham and the non-metropolitan district of Darlington: see Sch 1.

13 The Police Act 1996 describes the extent of this area as the county of Essex and the non-metropolitan districts of Southend-on-Sea and Thurrock: see Sch 1 (amended by the Essex (Police Area and Authority) Order 1997, SI 1997/1847, art 3).

14 The Police Act 1996 describes the extent of this area as the county of Gloucestershire: see Sch 1.

15 The Police Act 1996 describes the extent of this area as the metropolitan districts of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford and Wigan: see Sch 1.

16 The Police Act 1996 describes the extent of this area as the counties of Hampshire and Isle of Wight and the non-metropolitan districts of Portsmouth and Southampton: see Sch 1.

17 The Police Act 1996 describes the extent of this area as the county of Hertfordshire: see Sch 1.

18 The Police Act 1996 describes the extent of this area as the non-metropolitan districts of the East Riding of Yorkshire, Kingston upon Hull, North East Lincolnshire and North Lincolnshire: see Sch 1.

As from a day to be appointed, 'Humber' is to be substituted for 'Humberside': see Sch 1 (prospectively amended by the Police Act 1997 s 129(a)). At the date at which this volume states the law no such day had been appointed.

19 The Police Act 1996 describes the extent of this area as the county of Kent and the non-metropolitan district of Medway Towns: see Sch 1 (amended by the Kent (Police Area and Authority) Order 1997, SI 1997/1857, art 3).

20 The Police Act 1996 describes the extent of this area as the county of Lancashire and the non-metropolitan districts of Blackburn with Darwen and Blackpool: see Sch 1 (amended by the Lancashire (Police Area and Authority) Order 1997, SI 1997/1855, art 3).

21 The Police Act 1996 describes the extent of this area as the county of Leicestershire and the non-metropolitan districts of Leicester and Rutland: see Sch 1.

22 The Police Act 1996 describes the extent of this area as the county of Lincolnshire: see Sch 1.

23 The Police Act 1996 describes the extent of this area as the metropolitan districts of Knowsley, Liverpool, St Helens, Sefton and Wirral: see Sch 1.

24 The Police Act 1996 describes the extent of this area as the county of Norfolk: see Sch 1.

25 The Police Act 1996 describes the extent of this area as the county of Northamptonshire: see Sch 1.

26 The Police Act 1996 describes the extent of this area as the county of Northumberland and the metropolitan districts of Gateshead, Newcastle upon Tyne, North Tyneside, South Tyneside and Sunderland: see Sch 1.

27 The Police Act 1996 describes the extent of this area as the county of North Yorkshire and the non-metropolitan district of York: see Sch 1.

28 The Police Act 1996 describes the extent of this area as the county of Nottinghamshire and the non-metropolitan district of Nottingham: see Sch 1 (amended by the Nottingham (Police Area and Authority) Order 1997, SI 1997/1850, art 3).

29 The Police Act 1996 describes the extent of this area as the metropolitan districts of Barnsley, Doncaster, Rotherham and Sheffield: see Sch 1.

30 The Police Act 1996 describes the extent of this area as the county of Staffordshire and the non-metropolitan district of Stoke-on-Trent: see Sch 1.

31 The Police Act 1996 describes the extent of this area as the county of Suffolk: see Sch 1.

- 32 The Police Act 1996 describes the extent of this area as the county of Surrey: see Sch 1.
- 33 The Police Act 1996 describes the extent of this area as the counties of East Sussex and West Sussex and the non-metropolitan district of Brighton and Hove: see Sch 1.
- 34 The Police Act 1996 describes the extent of this area as the counties of Berkshire, Buckinghamshire and Oxfordshire and the non-metropolitan district of Milton Keynes: see Sch 1.
- 35 The Police Act 1996 describes the extent of this area as the county of Warwickshire: see Sch 1.
- 36 The Police Act 1996 describes the extent of this area as the counties of Shropshire and Worcestershire and the non-metropolitan districts of Herefordshire and the Wrekin: see Sch 1 (amended by the West Mercia (Police Area and Authority) Order 1997, SI 1997/1844, art 3(a), (b)).
- 37 The Police Act 1996 describes the extent of this area as the metropolitan districts of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton: see Sch 1.
- 38 The Police Act 1996 describes the extent of this area as the metropolitan districts of Bradford, Calderdale, Kirklees, Leeds and Wakefield: see Sch 1.
- 39 The Police Act 1996 describes the extent of this area as the county of Wiltshire and the non-metropolitan district of Thamesdown: see Sch 1.
- 40 The Police Act 1996 describes the extent of this area as the counties of Ceredigion, Carmarthenshire, Pembrokeshire and Powys: see Sch 1 (amended by the Police Act 1997 s 129(b)).
- 41 The Police Act 1996 describes the extent of this area as the county of Monmouthshire and the county boroughs of Blaenau Gwent, Caerphilly, Newport and Torfaen: see Sch 1.
- 42 The Police Act 1996 describes the extent of this area as the counties of the Isle of Anglesey, Gwynedd, Denbighshire and Flintshire and the county boroughs of Conwy and Wrexham: see Sch 1 (amended by the Police Act 1997 s 129(c)).
- 43 The Police Act 1996 describes the extent of this area as the counties of Cardiff and Swansea and the county boroughs of Bridgend, Merthyr Tydfil, Neath Port Talbot, Rhondda, Cynon, Taff and the Vale of Glamorgan: see Sch 1 (amended by the Police Act 1997 s 129(d)).
- 44 Police Act 1996 s 1(2)(b). As to the metropolitan police district see PARA 137 post.
- 45 Ibid s 1(2)(c). As to the City of London police area see PARA 138 post.
- 46 For the meaning of 'police force' see PARA 102 note 11 ante.
- 47 Police Act 1996 ss 2, 6(1), 101(1). As to the establishment of police authorities see PARA 139 et seq post; and as to their duty to maintain police forces see PARA 156 post.
- 48 As to the Metropolitan Police Authority see PARA 147 et seq post.
- 49 See the Police Act 1996 ss 5A, 5B (both as added); and PARA 137 post.
- 50 See PARA 138 post.

## UPDATE

### 136 Police areas

NOTE 2--1996 Act s 1(2)(a) amended: Local Government and Public Involvement in Health Act 2007 Sch 1 para 19(2).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(1) POLICE AREAS AND AUTHORITIES/(i) Police Areas/137. The metropolitan police.

### 137. The metropolitan police.

The metropolitan police district consists of Greater London<sup>1</sup> (excluding the City of London, the Inner Temple and the Middle Temple)<sup>2</sup>. The Metropolitan Police Authority is the police authority for the metropolitan police district<sup>3</sup> and it must maintain a police force<sup>4</sup> for the metropolitan police district<sup>5</sup>. The metropolitan police force is under the direction and control of the Metropolitan Police Commissioner<sup>6</sup>. The Metropolitan Police Authority must keep a police fund<sup>7</sup>.

1 'Greater London' comprises the areas of the London boroughs, the City and the Temples: London Government Act 1963 s 2(1). 'London borough' means a borough described in the London Government Act 1963 s 1, Sch 1 (as amended) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30): see the Interpretation Act 1978 s 5, Sch 1.

2 See the London Government Act 1963 s 76(1) (substituted by the Greater London Authority Act 1999 s 323); applied by the Police Act 1996 s 101(1). As to the City of London and the Temples see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 31-32.

3 Ibid s 5B(1), (2) (ss 5A, 5B added by the Greater London Authority Act 1999 s 310(1)). As to the Metropolitan Police Authority see PARA 147 et seq post.

4 For the meaning of 'police force' see PARA 102 note 11 ante.

5 Police Act 1996 ss 5A, 6(1), (5) (s 5A as added (see note 3 supra); s 6(5) added by the Greater London Authority Act 1999 s 311).

6 Police Act 1996 s 9A(1) (s 9A added by the Greater London Authority Act 1999 s 314). As to the appointment of the Metropolitan Police Commissioner see PARA 183 post.

7 See the Police Act 1996 s 14(1), (4) (as added); and PARA 167 post.

## UPDATE

### 137 The metropolitan police

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(1) POLICE AREAS AND AUTHORITIES/(i) Police Areas/138. The City of London police.

### 138. The City of London police.

The City of London and its liberties comprise a police area<sup>1</sup> for which the Common Council of the City of London<sup>2</sup> is the police authority<sup>3</sup>. A police committee exists for the purpose of exercising such powers in connection with the police as the Common Council delegates to it<sup>4</sup>. The chief officer of police is the City of London Police Commissioner<sup>5</sup>. The expenses of the City of London police force are paid out of the City of London police fund<sup>6</sup>.

1 'City of London police area' means the City of London as defined for the purposes of the Acts relating to the City of London police force: Police Act 1996 s 101(1). As to police areas see PARA 136 ante. As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31.



- 2 As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.
- 3 See the Police Act 1996 s 101(1).
- 4 See the City of London Police Act 1839 s 56.
- 5 See the Police Act 1996 s 101(1). As to the City of London Police Commissioner see PARA 187 post.
- 6 See *ibid* s 101(1). As to the City of London police fund see PARA 167 post.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(1) POLICE AREAS AND AUTHORITIES/(ii) Police Authorities/A. AUTHORITIES IN ENGLAND AND WALES/139. Police authorities.

## **(ii) Police Authorities**

### **A. AUTHORITIES IN ENGLAND AND WALES**

#### **139. Police authorities.**

There is a police authority<sup>1</sup> for every police area<sup>2</sup> in England and Wales<sup>3</sup>. A police authority established for any area<sup>4</sup> is a body corporate, and is known by the name of the area with the addition of the words 'police authority'<sup>5</sup>.

1 'Police authority' means: (1) in relation to a police area listed in the Police Act 1996 s 1(2), Sch 1 (as amended) (see PARA 136 ante), the authority established under s 3; (2) in relation to the metropolitan police district, the Metropolitan Police Authority; and (3) in relation to the City of London police area, the Common Council: s 101(1) (definition amended by the Greater London Authority Act 1999 s 312(1), (2)). This definition is applied to any other Act, unless the contrary intention appears: see the Interpretation Act 1978 s 5, Sch 1 (amended by the Police Act 1996 s 103, Sch 7 para 32). As to the metropolitan police district see PARA 137 ante; and as to the Metropolitan Police Authority see PARA 147 et seq post. As to the City of London police area see PARA 138 ante; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

Police authorities are local authorities for certain purposes: see LOCAL GOVERNMENT vol 69 (2009) PARA 23.

2 *Ie* for every police area for the time being listed in the Police Act 1996 Sch 1 (as amended): see PARA 136 ante. Thus 'police area', for these purposes, does not include the metropolitan police district or the City of London police area: see s 3(1).

3 *Ibid* s 3(1). For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante. As to membership of police authorities see PARA 140 et seq post.

4 *Ie* established under *ibid* s 3.

5 *Ibid* s 3(2). As to bodies corporate see COMPANIES; CORPORATIONS.

As to alternative names in Welsh for police authorities in Wales see the Welsh Language Act 1993 ss 25, 27 (s 25 as amended); and the Welsh Language (Names for Police Authorities in Wales) Order 1994, SI 1994/2736. As to Welsh language provisions generally see STATUTES vol 44(1) (Reissue) PARA 1368.

## **UPDATE**

### **139-155 Police Authorities**

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372,

379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(1) POLICE AREAS AND AUTHORITIES/(ii) Police Authorities/A. AUTHORITIES IN ENGLAND AND WALES/140. Membership of police authorities.

#### **140. Membership of police authorities.**

Each police authority<sup>1</sup> consists of 17 members<sup>2</sup>, but the Secretary of State<sup>3</sup> may by order provide in relation to a specified police authority that the number of its members is to be a specified odd number greater than 17<sup>4</sup>. Where an order varies or revokes an earlier order so as to reduce the number of a police authority's members<sup>5</sup>, the Secretary of State must, before making the order, consult<sup>6</sup> the authority and relevant councils<sup>7</sup>. An order may include provision as to the termination of the appointment of existing members of the authority and the making of new appointments or re-appointments<sup>8</sup>.

The following provisions continue in force until 31 March 2008<sup>9</sup>. Where a police authority consists of 17 members, nine members must be members of a relevant council<sup>10</sup>, five must be independent members<sup>11</sup> and three must be lay justices<sup>12</sup>. Where a police authority consists of more than 17 members the balance of members is adjusted<sup>13</sup>. A person who ceases to be a member, other than by removal from office<sup>14</sup>, or who ceases to be chairman or vice chairman<sup>15</sup> may (if otherwise eligible) be re-appointed<sup>16</sup>. A police authority may make to its chairman, vice-chairmen and other members such payments by way of reimbursement of expenses and allowances as the authority may determine<sup>17</sup>. The Secretary of State may by regulations impose such limits as may be provided for by or under the regulations on the payments that may be made<sup>18</sup>. The acts and proceedings of any person appointed to be a member, chairman or vice chairman of a police authority and acting in that office are, notwithstanding his disqualification or want of qualification, as valid and effectual as if he had been qualified<sup>19</sup>. The proceedings of a police authority are not invalidated by a vacancy in the membership of the authority or in the office of chairman, by a vacancy for a vice-chairman, or by any defect in the appointment of a person as a member or as chairman or vice-chairman<sup>20</sup>.

A police authority must establish a standards committee<sup>21</sup> and must also adopt a code of conduct setting out the standards of conduct which are expected of its members<sup>22</sup>. A member of a police authority is entitled to time off work for the purpose of attending meetings of the authority or a committee of the authority and for discharging functions in connection with the authority<sup>23</sup>.

1    le each police authority established under the Police Act 1996 s 3: see PARA 139 ante.

2    Ibid s 4(1).

3    As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

4    Ibid s 4(2). Any power of the Secretary of State to make such orders is exercisable by statutory instrument: s 102. A statutory instrument containing such an order must be laid before Parliament after being made: s 4(3).

The Police (Number of Members of Police Authorities) Order 1994, SI 1994/2024, has effect as if made under this provision by virtue of the Police Act 1996 s 103(2), Sch 8 para 1(2). Orders which are local in nature are not recorded in this work.

The Police Act 1996 Sch 2 (as amended) was substituted, and Sch 3 (as amended) and Sch 3A (as added and amended) were repealed, with effect from 15 January 2007 (see the Police and Justice Act 2006 ss 2, 52, Sch 2 paras 2, 6, Sch 15 Pt 1(B); and the Police and Justice Act 2006 (Commencement No 1, Transitional and Saving Provisions) Order 2006, SI 2006/3364, art 2), and the Police Act 1996 Sch 2 (as substituted) (see PARA 146 post) has effect in relation to the appointment of members of police authorities (see s 4(4) (amended by the Police and Justice Act 2006 s 2, Sch 2 para 1)). However, until 31 March 2008 the Police Act 1996 Sch 2 (as amended) (see note 7 infra; the text and notes 10-20 infra; and PARAS 143-145 post) continues in force, save that the provisions of Sch 2 paras 1-8 (as amended) (see the text to notes 10-13 infra) only apply to appointments that take effect before 1 April 2008; and likewise Sch 3 (as amended) (see PARA 141 post) and Sch 3A (as added and amended) (see PARA 142 post) continue in force until 31 March 2008: see the Police and Justice Act 2006 (Commencement No 1, Transitional and Saving Provisions) Order 2006, SI 2006/3364, art 3(1), (3)(a).

5 Police Act 1996 s 5(1).

6 As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

7 Police Act 1996 s 5(2)(a), (b) (s 5(2)(b) amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 371(a), (b), Sch 10). A council is a 'relevant council' in relation to a police authority if: (1) it is the council for a county, district, or county borough which constitutes, or is wholly within, the authority's police area; and (2) in the case of a district council, the district is not in a county having a county council within head (1) supra: Police Act 1996 Sch 2 para 26(1) (amended by the Greater London Authority Act 1999 s 325, Sch 27 para 105(1), (4)(a)). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

8 Police Act 1996 s 5(3).

9 See note 4 supra. As to membership after 31 March 2008 see PARA 146 post.

10 Police Act 1996 Sch 2 para 1(1)(a). In the case of a police authority in relation to which there is only one relevant council, the members of the police authority are to be appointed by that council: Sch 2 para 2(1). In any other case, those members are to be appointed by a joint committee consisting of persons appointed by the relevant councils from among their own members: Sch 2 para 2(2). The number of members of the joint committee, and the number of those members to be appointed by each relevant council, are to be such as the councils may agree or, in the absence of agreement, as may be determined by the Secretary of State: Sch 2 para 3. A council or joint committee must exercise its power to appoint members of a police authority so as to ensure that, so far as practicable, in the case of the members for whose appointment it is responsible, the proportion who are members of any given party: (1) where it is a council that is responsible for their appointment, is the same as the proportion of the members of the council who are members of that party; and (2) where it is a joint committee that is so responsible, is the same as the proportion of the members of the relevant councils taken as a whole who are members of that party: Sch 2 para 4(1) (substituted by the Criminal Justice and Police Act 2001 s 105(1)). 'Party' means political party: see *R (on the application of East Riding Yorkshire Council) v Joint Committee for the Purpose of Making Appointments to the Humberside Police Authority* [2001] LGR 292, [2000] All ER (D) 2358. As to the political balance requirements for local authorities see LOCAL GOVERNMENT vol 69 (2009) PARAS 375-377.

11 Police Act 1996 Sch 2 para 1(1)(b). As to the selection of independent members see PARA 141 post. The independent members of a police authority are to be appointed by the members of the police authority appointed under Sch 2 para 2 (see note 10 supra) or Sch 2 para 8 (as substituted) (see note 12 infra), from among persons on a short-list prepared by the Secretary of State in accordance with Sch 3 (as amended) (see PARA 141 post): Sch 2 para 5. Every police authority must arrange for a notice stating the name of each of its members appointed under Sch 2 para 5, and such other information relating to him as the authority considers appropriate, to be published in such manner as appears to it to be appropriate: Sch 2 para 6(1). A police authority must send to the Secretary of State a copy of any such notice which it has arranged to be published: Sch 2 para 6(2).

12 Ibid Sch 2 para 1(1)(c) (amended by the Courts Act 2003 Sch 8 para 373(1), (2)). 'Lay justice' has the meaning given by the Courts Act 2003 s 9 (see MAGISTRATES): Police Act 1996 Sch 2 para 27 (substituted by the Courts Act 2003 Sch 8 para 373(1), (7)). These members of a police authority must be lay justices, each of whom is assigned to a local justice area wholly or partly within the authority's area: Police Act 1996 Sch 2 para 7 (Sch 2 paras 7, 8 substituted by the Courts Act 2003 Sch 8 para 373(1), (3)). They must be appointed by the members of the police authority appointed under the Police Act 1996 Sch 2 para 2 (see note 10 supra) or Sch 2 para 5 (see note 11 supra), from among persons on a short-list prepared in accordance with Sch 3A (as added and amended) (see PARA 142 post): Sch 2 para 8 (as so substituted).

13 See *ibid* Sch 2 para 1(2). Where, by virtue of an order under s 4(2) (see the text to notes 3-4 *supra*), a police authority is to consist of more than 17 members: (1) a number which is greater by one than the number of members provided for in heads (2) and (3) *infra* are to be members of a relevant council appointed under Sch 2 para 2 (see note 10 *supra*); (2) such number as may be prescribed by the order, not exceeding one third of the total membership, are to be independent members appointed under Sch 2 para 5 (see note 11 *supra*); and (3) the remainder are to be lay justices appointed under Sch 2 para 8 (as substituted) (see note 12 *supra*): Sch 2 para 1(2) (amended by the Courts Act 2003 Sch 8 para 373(1), (2)).

14 *Ie* by virtue of the Police Act 1996 Sch 2 para 19 (as amended): see PARA 145 *post*.

15 As to the chairman and vice chairman see PARA 143 *post*.

16 Police Act 1996 Sch 2 para 22 (amended by the Criminal Justice and Police Act 2001 s 104(4)(a)).

17 Police Act 1996 Sch 2 para 25A(1) (Sch 2 paras 25A, 25B added by the Criminal Justice and Police Act 2001 s 107(2)). Subject to the Police Act 1996 Sch 2 para 25A(6) (as added) (see the text to note 18 *infra*), no payment may be made except in accordance with arrangements published by the authority not more than 12 months before the making of the payment: Sch 2 para 25A(2) (as so added). 'Month' means calendar month: Interpretation Act 1978 s 5, Sch 1. A police authority may from time to time revise any arrangements made for these purposes; but no revisions take effect until published by the authority: Police Act 1996 Sch 2 para 25A(3) (as so added). It is the duty of a police authority, when making or revising any such arrangements, to have regard to any guidance given by the Secretary of State about the reimbursement of expenses or about the payment of allowances: Sch 2 para 25A(4) (as so added). Payments may differ according to whether the recipient is the chairman, a vice chairman or other member or is appointed under Sch 2 para 2 (see note 10 *supra*), Sch 2 para 5 (see note 11 *supra*) or Sch 2 para 8 (as substituted) (see note 12 *supra*): Sch 2 para 25A(5) (as so added). Schedule 2 para 25A (as added) has effect in relation to a police authority as if references to members of the authority included references to persons who are not members of the authority but are members of the authority's standards committee; and the power to make different payments according to the recipient includes power to make different payments to persons who are not members of the authority but are members of the authority's standards committee (see the text to note 21 *infra*): Sch 2 para 25B (as so added).

18 *Ibid* Sch 2 para 25A(6) (as added: see note 17 *supra*). Any power of the Secretary of State to make such regulations is exercisable by statutory instrument: s 102. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 2 para 25A(7) (as so added). At the date at which this volume states the law no such regulations had been made.

19 *Ibid* Sch 2 para 23 (amended by the Criminal Justice and Police Act 2001 s 104(4)(a)).

20 Police Act 1996 Sch 2 para 24 (amended by the Criminal Justice and Police Act 2001 s 104(5)).

21 See the Local Government Act 2000 s 53; and LOCAL GOVERNMENT vol 69 (2009) PARA 238 *et seq*.

22 See *ibid* s 51; and LOCAL GOVERNMENT vol 69 (2009) PARA 235. The Secretary of State has issued a model code of conduct, all of the provisions of which are mandatory: see the Police Authorities (Model Code of Conduct) Order 2001, SI 2001/3578.

23 See the Employment Rights Act 1996 s 50(2), (3) (as amended); and EMPLOYMENT vol 39 (2009) PARA 312.

## UPDATE

### 139-155 Police Authorities

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

## 140 Membership of police authorities

NOTE 4--References to 31 March 2008 are now to 30 September 2008 and reference to 1 April 2008 is now to 1 October 2008: SI 2006/3364 art 3(1), (3)(a) (amended by SI 2008/617).

TEXT AND NOTE 9--Now 30 September 2008: see NOTE 4.

NOTE 22--SI 2001/3578 replaced by Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159.

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### 141. Selection of independent members.

The following provisions continue in force until 31 March 2008<sup>1</sup>.

There is a selection panel for each police area<sup>2</sup> for the purposes<sup>3</sup> of the appointment of independent members to the relevant police authority<sup>4</sup>.

Each selection panel consists of three members, one of whom is to be appointed by each of the following: (1) the designated members of the police authority for the area<sup>5</sup>; (2) the Secretary of State<sup>6</sup>; and (3) the two members of the panel appointed by virtue of heads (1) and (2) above<sup>7</sup>. A person is appointed to hold office as a member of a selection panel for a term of two years<sup>8</sup>. A person may at any time resign his office as a member by notice in writing<sup>9</sup> to the persons<sup>10</sup> who would be required to appoint his successor<sup>11</sup>. A person does not cease to be a member by reason only that any of the persons appointing him cease to hold the positions by virtue of which they appointed him<sup>12</sup>. A member of a selection panel may be removed from office by notice in writing by the persons who would be required to appoint his successor<sup>13</sup> if: (a) the member has been absent from two consecutive meetings of the selection panel without the consent of the panel<sup>14</sup>; (b) the member has been convicted of a criminal offence (but is not disqualified for being a member)<sup>15</sup>; (c) the appointer is satisfied that the member is incapacitated by physical or mental illness<sup>16</sup>; or (d) the appointer is satisfied that the member is otherwise unable or unfit to discharge his functions as a member<sup>17</sup>. A person who ceases to be a member of a selection panel, otherwise than by virtue of heads (a) to (d) above, may if otherwise eligible be re-appointed<sup>18</sup>. The acts and proceedings of any person appointed to be a member of a selection panel and acting in that office, notwithstanding his disqualification or want of qualification, are as valid and effectual as if he had been qualified<sup>19</sup>. The proceedings of a selection panel<sup>20</sup> are not invalidated by a vacancy in the membership of the panel<sup>21</sup>, or a defect in the appointment of a person as a member<sup>22</sup>.

The selection panel for the police authority's area must nominate persons willing to be candidates for appointment as independent members of the authority<sup>23</sup>. A selection panel must notify the Secretary of State of the name of each person nominated by it<sup>24</sup> and such other information regarding those persons as it considers appropriate<sup>25</sup>. In exercising its functions a selection panel must have regard to the desirability of ensuring that, so far as reasonably practicable, the persons nominated by it represent the interests of a wide range of people within the community in the police area<sup>26</sup>, and include persons with skills, knowledge or experience in any specified fields<sup>27</sup>.

Where the Secretary of State receives a notice of nominations<sup>28</sup>, he must as soon as practicable prepare a short-list of candidates and send it to the police authority concerned<sup>29</sup>. Unless the

number of persons nominated by the selection panel is less than twice the number of vacancies, the candidates on the short-list prepared by the Secretary of State are to be persons nominated by the selection panel, and their number must be one half of the number of those persons<sup>30</sup>. Where the number of persons nominated by the panel is an odd number, the number to be short-listed by the Secretary of State must be one half of the number nominated reduced by one<sup>31</sup>.

1 As to the substitution of the Police Act 1996 Sch 2 (as amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 140 note 4 ante. As to membership after 31 March 2008 see PARA 146 post.

2 Ie each police area for the time being listed in *ibid* s 1(2), Sch 1 (see PARA 136 ante) (s 4(4), Sch 3 para 1(1) (a) (renumbered by the Greater London Authority Act 1999 s 325, Sch 27 para 106(1), (2))); and the police area constituted by the metropolitan police district (see PARA 137 ante) (Police Act 1996 Sch 3 para 1(1)(b) (added by the Greater London Authority Act 1999 Sch 27 para 106(1), (2))).

3 Ie for the purposes of the Police Act 1996 s 4(4), Sch 2 para 5 (see PARA 140 ante) and Sch 2A para 3(3) (as added) (see PARA 149 post).

4 *Ibid* Sch 3 para 1(1) (amended by the Courts Act 2003 s 109(1), Sch 8 para 375(1), (2)). For the meaning of 'police authority' see PARA 139 note 1 ante. A police authority must make to members of the selection panel for the authority's area such payments by way of reimbursement of expenses and allowances as it may determine: Police Act 1996 Sch 3 para 7(1). The authority must also provide the selection panel for the authority's area with such accommodation, and such secretarial and other assistance, as it may reasonably require (Sch 3 para 7(2)(a)), and meet any expenses incurred by the panel in the exercise of its functions (Sch 3 para 7(2)(b)).

5 *Ibid* Sch 3 para 1(2)(a). 'Designated member' means a member appointed under Sch 2 para 2 or Sch 2 para 8 (as substituted) (see PARA 140 ante) or Sch 2A para 2 (as added) (see PARA 148 post) or Sch 2A para 5 (as added) (see PARA 150 post): Sch 3 para 1(4) (amended by the Greater London Authority Act 1999 Sch 27 para 106(1), (3)). A designated member may be appointed as a member of a selection panel by virtue of the Police Act 1996 Sch 3 para 1(2)(a) (but not Sch 3 para 1(2)(b) or (c): see heads (2), (3) in the text): Sch 3 para 1(3).

6 *Ibid* Sch 3 para 1(2)(b). As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

7 *Ibid* Sch 3 para 1(2)(c).

8 *Ibid* Sch 3 para 3(1) (amended by the Greater London Authority Act 1999 Sch 27 para 106(1), (5); and the Criminal Justice and Police Act 2001 s 137, Sch 7 Pt 4).

9 For the meaning of 'writing' see PARA 115 note 9 ante.

10 Ie the persons referred to in heads (1)-(3) in the text.

11 Police Act 1996 Sch 3 para 3(2).

12 *Ibid* Sch 3 para 3(3).

13 Ie the persons referred to in heads (1)-(3) in the text.

14 Police Act 1996 Sch 3 para 4(a).

15 *Ibid* Sch 3 para 4(b). A person is disqualified for being appointed as or being a member of a selection panel if, by virtue of Sch 2 para 11, 13 or 14(1)(d)-(f) (see PARA 144 post) or Sch 2A para 7, 8 or 9(1)(b) or (f)-(h) (as added) (see PARA 152 post), he is disqualified: (1) for being appointed under Sch 2 para 5 (see PARA 140 ante) or Sch 2A para 3(2) or (3) (as added) (see PARA 149 post) as a member of the police authority for the panel's area; or (2) for being a member so appointed: Sch 3 para 2 (amended by the Greater London Authority Act 1999 Sch 27 para 106(1), (4)(a), (b); and the Criminal Justice and Police Act 2001 Sch 7 Pt 4).

16 Police Act 1996 Sch 3 para 4(c).

17 *Ibid* Sch 3 para 4(d).

18 *Ibid* Sch 3 para 5.

19 *Ibid* Sch 3 para 6(1).

20 le subject to any regulations made under *ibid* Sch 3 para 11: see note 27 *infra*.

21 *Ibid* Sch 3 para 6(2)(a).

22 *Ibid* Sch 3 para 6(2)(b).

23 See *ibid* Sch 3 para 8(1) (amended by the Greater London Authority Act 1999 Sch 27 para 106(1), (7)(a)). Unless the selection panel is able to identify only a smaller number, the number of persons to be nominated by a selection panel on any occasion must be a number four times greater than the number of appointments to be made under the Police Act 1996 Sch 2 para 5 (see PARA 140 *ante*) or Sch 2A para 3(3) (as added) (see PARA 149 *post*) (as the case may be): Sch 3 para 8(2) (amended by the Greater London Authority Act 1999 Sch 27 para 106(1), (7)(b)). A person must not be nominated under the Police Act 1996 Sch 3 para 8 (as amended) in relation to an authority: (1) if, by virtue of Sch 2 para 11, 13 or 14 (see PARA 144 *post*), he is disqualified for being appointed as a member of the authority under Sch 2 para 5 (Sch 3 para 9(a) (renumbered by the Greater London Authority Act 1999 Sch 27 para 106(1), (8); and amended by the Criminal Justice and Police Act 2001 Sch 7 Pt 4)); or (2) if, by virtue of the Police Act 1996 Sch 2A para 7, 8 or 9 (as added) (see PARA 152 *post*), he is disqualified for being appointed as a member of the authority under Sch 2A para 3(3) (as added) (Sch 3 para 9(b) (added by the Greater London Authority Act 1999 Sch 27 para 106(1), (8))).

24 Police Act 1996 Sch 3 para 8(3)(a).

25 *Ibid* Sch 3 para 8(3)(b).

26 *Ibid* Sch 3 para 10(a).

27 *Ibid* Sch 3 para 10(b). The fields of expertise are such as may be specified in regulations made under Sch 3 para 11: see Sch 3 para 10(b). The Secretary of State may make regulations as to the procedures to be followed in relation to the selection of persons for nomination, and the conduct of the proceedings of selection panels: Sch 3 para 11(1). Without prejudice to the generality of Sch 3 para 11(1), regulations may: (1) make provision (including provision imposing time limits) as to the procedures to be adopted when inviting applications or suggestions for nomination, and for dealing with applications and suggestions received (Sch 3 para 11(2)(a)); (2) make provision specifying the fields referred to in Sch 3 para 10 (Sch 3 para 11(2)(b)); (3) prescribe matters, in addition to those mentioned in Sch 3 para 10, to which a selection panel is to have regard in carrying out any of its functions (Sch 3 para 11(2)(c)); and (4) provide for decisions of a selection panel to be taken by a majority of the members (Sch 3 para 11(2)(d)). Regulations may make different provision for different cases and circumstances: Sch 3 para 11(3). Any power of the Secretary of State to make such regulations is exercisable by statutory instrument: s 102. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 3 para 11(4). The Police Authorities (Selection Panel) Regulations 1994, SI 1994/2023 (amended by SI 2000/1549; SI 2002/1282) have effect under the Police Act 1996 Sch 3 para 11 by virtue of s 103(2), Sch 8 para 1(2).

28 le a notice under *ibid* Sch 3 para 8(3) (see the text to notes 24-25 *supra*).

29 *Ibid* Sch 3 para 12(1). The Secretary of State must give to the designated members any information regarding the persons on his short-list which they request and which he has received under Sch 3 para 8 (see the text to notes 24-25 *supra*): Sch 3 para 14.

30 See *ibid* Sch 3 para 12(2). If the number of persons nominated by the selection panel is less than twice the number of vacancies to be filled by appointments, the Secretary of State may himself nominate such number of candidates as, when added to the number nominated by the selection panel, equals twice the number of vacancies; and, if he does so, Sch 3 para 12 has effect as if the selection panel had nominated the Secretary of State's nominees as well as its own: see Sch 3 para 13 (amended by the Greater London Authority Act 1999 Sch 27 para 106(1), (9)).

31 Police Act 1996 Sch 3 para 12(3).

## UPDATE

### 139-155 Police Authorities

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police

authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **141-145 Selection of independent members ... Tenure of office**

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 140 NOTE 4.

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### **142. Selection of lay justice members.**

The following provisions continue in force until 31 March 2008<sup>1</sup>.

There is a selection panel for each police area<sup>2</sup> for the purposes<sup>3</sup> of the appointment of lay justice members to the relevant police authority<sup>4</sup>.

Each selection panel consists of three members, one of whom is appointed by each of the following: (1) the designated members of the police authority for the area<sup>5</sup>; (2) the Secretary of State<sup>6</sup>; (3) the two members of the panel appointed by virtue of heads (1) and (2) above<sup>7</sup>.

A person is disqualified for being appointed as or being a member of a selection panel if he is disqualified<sup>8</sup>: (a) for being appointed<sup>9</sup> as a member of the police authority for the panel's area<sup>10</sup>; or (b) for being a member so appointed<sup>11</sup>. The provisions applicable to selection panels for independent members<sup>12</sup> in respect of tenure of office, removal from the panel, payment of expenses and allowances and validity of proceedings apply also in relation to selection panels for the appointment of lay justice members<sup>13</sup>.

Where appointments of lay justices to a police authority are to be made, the selection panel for the authority's area must prepare a short-list of candidates and send it to the police authority concerned<sup>14</sup>. Unless the selection panel is able to identify only a smaller number of suitable candidates, the number of candidates on the short-list must be twice the number of appointments to be made<sup>15</sup>. A lay justice must not be included on a short-list in relation to an authority if he is disqualified<sup>16</sup> for being appointed as a member of that authority<sup>17</sup>. The Secretary of State may make regulations<sup>18</sup> as to the procedures to be followed in relation to the selection of lay justices for inclusion on a short-list<sup>19</sup>, and the conduct of the proceedings of selection panels<sup>20</sup>.

1 As to the substitution of the Police Act 1996 Sch 2 (as amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 140 note 4 ante. As to membership after 31 March 2008 see PARA 146 post.

2 I.e. each police area for the time being listed in *ibid* s 1(2), Sch 1 (see PARA 136 ante) (Sch 3A para 1(1)(a) (Sch 3A added by the Courts Act 2003 s 109(1), Sch 8 para 376)); and the police area constituted by the metropolitan police district (see PARA 137 ante) (Police Act 1996 Sch 3A para 1(1)(b) (as so added)).

3 I.e. for the purposes of *ibid* Sch 2 para 8 (as substituted) (see PARA 140 ante) and Sch 2A para 5 (as added) (see PARA 150 post).



4 Ibid Sch 3A para 1(1) (as added: see note 2 supra). For the meaning of 'lay justice' see PARA 140 note 12 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.

5 Ibid Sch 3A para 1(2)(a) (as added: see note 2 supra). A designated member may be appointed as a member of a selection panel by virtue of Sch 3A para 1(2)(a) (as added) (but not Sch 3A para 1(2)(b) or (c) (as added) (see heads (2), (3) in the text)): Sch 3A para 1(3) (as so added). 'Designated member' means a member appointed under Sch 2 para 2 or Sch 2 para 5 (see PARA 140 ante) or Sch 2A para 2 (as added) (see PARA 148 post) or Sch 2A para 3 (as added) (see PARA 149 post): Sch 3A para 1(4) (as so added).

6 Ibid Sch 3A para 1(2)(b) (as added: see note 2 supra). As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

7 Ibid Sch 3A para 1(2)(c) (as added: see note 2 supra).

8 Ie by virtue of ibid Sch 2 para 11 (see PARA 144 post) or Sch 2A para 7 (as added) (see PARA 152 post).

9 Ie under ibid Sch 2 para 8 (as substituted) (see PARA 140 ante) or Sch 2A para 5 (as added) (see PARA 150 post).

10 Ibid Sch 3A para 2(a) (as added: see note 2 supra).

11 Ibid Sch 3A para 2(b) (as added: see note 2 supra).

12 Ie ibid Sch 3 paras 3-7 (as amended): see PARA 141 ante.

13 See ibid Sch 3A para 3 (as added: see note 2 supra).

14 Ibid Sch 3A para 4(1) (as added: see note 2 supra).

15 Ibid Sch 3A para 4(2) (as added: see note 2 supra). Where the number of persons on the lay justice selection panel's short-list is less than twice the number of appointments to be made, the designated members may add to the short-list such number of candidates as, when added to the number short-listed by the selection panel, equals twice the number of appointments to be made: Sch 3A para 6(1), (2) (as so added).

16 Ie by virtue of ibid Sch 2 para 11 (see PARA 144 post) or Sch 2A para 7 (as added) (see PARA 152 post).

17 Ibid Sch 3A para 4(3) (as added: see note 2 supra).

18 Such regulations may in particular: (1) make provision (including provision imposing time limits) as to the procedures to be adopted when inviting applications for inclusion on a short-list under ibid Sch 3A para 4 (as added) (see the text to notes 13-17 supra) and for dealing with applications received (Sch 3A para 5(2)(a) (as added: see note 2 supra)); and (2) provide for decisions of a selection panel to be taken by a majority of the members (Sch 3A para 5(2)(b) (as so added)). The regulations may make different provision for different cases and circumstances: Sch 3A para 5(3) (as so added). Any power of the Secretary of State to make such regulations is exercisable by statutory instrument: s 102. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 3A para 5(4) (as so added). As to the regulations that have been made see the Police Authorities (Lay Justices Selection Panel) Regulations 2005, SI 2005/584.

19 Police Act 1996 Sch 3A para 5(1)(a) (as added: see note 2 supra).

20 Ibid Sch 3A para 5(1)(b) (as added: see note 2 supra).

## UPDATE

### 139-155 Police Authorities

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities;

and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **141-145 Selection of independent members ... Tenure of office**

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 140 NOTE 4.

### **142 Selection of lay justice members**

NOTE 13--For the purpose of the 2003 Act Sch 3 para 3(3), persons exercising functions in the system that supports the carrying on of the business of the courts and the services provided for those courts, are a specified organisation: Her Majesty's Inspectorate of Court Administration (Specified Organisations) Order 2007, SI 2007/1176.

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### **143. The chairman and vice chairmen.**

The following provisions continue in force until 31 March 2008<sup>1</sup>.

A police authority<sup>2</sup> must as the first business transacted at its annual meeting appoint a chairman from among its members<sup>3</sup>. On a casual vacancy occurring in the office of chairman an appointment to fill the vacancy must be made at the next meeting of the authority, other than an extraordinary meeting<sup>4</sup>, unless that meeting is within 14 days of the vacancy occurring and is not an annual meeting, in which case it must be made at the next following meeting<sup>5</sup>.

At an annual meeting a police authority may appoint one or more vice-chairmen from among its members<sup>6</sup>, and the making of such appointments must be the first business transacted at the meeting after the appointment of the chairman<sup>7</sup>. Where a vice-chairman ceases to hold office at any time between annual meetings, a police authority may make an appointment to fill the vacancy at any meeting of the authority held more than 14 days after the occurrence of the vacancy<sup>8</sup>. Subject to any standing orders made by a police authority, anything authorised or required to be done by, to or before its chairman may be done by, to or before any vice-chairman of the authority<sup>9</sup>.

If a chairman or vice-chairman of a police authority ceases to be a member, he must also cease to be chairman or vice-chairman<sup>10</sup>.

1 As to the substitution of the Police Act 1996 Sch 2 (as amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 140 note 4 ante. As to membership after 31 March 2008 see PARA 146 post.

2 For the meaning of 'police authority' see PARA 139 note 1 ante. As to membership of police authorities see PARA 140 ante.

3 See the Police Act 1996 s 4(4), Sch 2 para 9(1), (2).

4 Ibid Sch 2 para 9(3)(a).

- 5 Ibid Sch 2 para 9(3)(b).
- 6 Ibid Sch 2 para 9A(1) (Sch 2 para 9A added by the Criminal Justice and Police Act 2001 s 104(1)).
- 7 Police Act 1996 Sch 2 para 9A(2) (as added: see note 6 supra).
- 8 Ibid Sch 2 para 9A(3) (as added: see note 6 supra).
- 9 Ibid Sch 2 para 9A(4) (as added: see note 6 supra).
- 10 Ibid Sch 2 para 21 (amended by the Criminal Justice and Police Act 2001 s 104(4)(a)).

## **UPDATE**

### **139-155 Police Authorities**

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **141-145 Selection of independent members ... Tenure of office**

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 140 NOTE 4.

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### **144. Disqualification.**

The following provisions continue in force until 31 March 2008<sup>1</sup>.

A person is disqualified for being appointed or being a member of a police authority<sup>2</sup> if: (1) he holds any paid office or employment, appointments to which are or may be made or confirmed by the police authority or any committee or sub-committee of the authority or by a joint committee on which the authority is represented or by any person holding any such office or employment<sup>3</sup>; (2) a bankruptcy order has been made against him or his estate has been sequestrated or he has made a composition or arrangement with, or granted a trust deed for, his creditors<sup>4</sup>; (3) he is subject to a director's disqualification order<sup>5</sup> or disqualification undertaking<sup>6</sup> or an order<sup>7</sup> relating to failure to pay under a county court administration order<sup>8</sup>; or (4) he has within five years before the date of his appointment or since his appointment been convicted in the United Kingdom<sup>9</sup>, the Channel Islands or the Isle of Man of an offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months<sup>10</sup>.

A paid employee of a police authority who is employed under the direction of a joint board, joint authority or joint committee on which the authority is represented and any member of which is appointed on the nomination of some other police authority is disqualified for being appointed as or being a member of that other police authority<sup>11</sup>.

In relation to membership of a police authority as an independent member, a person is disqualified<sup>12</sup>:

- 22 (a) for being appointed an independent member<sup>13</sup> if he has not yet attained the age of 21<sup>14</sup> or if neither his principal or only place of work, nor his principal or only place of residence, has been in the area<sup>15</sup> of the authority during the whole of the period of 12 months<sup>16</sup> ending with the day of appointment<sup>17</sup>;
  - 23 (b) for being a member so appointed if, at any time, neither his principal or only place of work, nor his principal or only place of residence, is within the area of the authority<sup>18</sup>;
  - 24 (c) for being appointed as an independent member, and for being a member so appointed, if:
- 3
4. (i) he is a member of the council for a county, district, county borough or London borough which is wholly or partly within the area of the police authority<sup>19</sup>;
  5. (ii) he is a lay justice eligible for appointment<sup>20</sup> to the police authority<sup>21</sup>;
  6. (iii) he is a member of the selection panel<sup>22</sup> for the police authority's area<sup>23</sup>;
  7. (iv) he is a member of a police force<sup>24</sup>;
  8. (v) he is an officer or employee of a police authority<sup>25</sup>; or
  9. (vi) he is an officer or employee of a relevant council<sup>26</sup>.
- 4

1 As to the substitution of the Police Act 1996 Sch 2 (as amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 140 note 4 ante. As to membership after 31 March 2008 see PARA 146 post.

2 For the meaning of 'police authority' see PARA 139 note 1 ante. As to membership of police authorities see PARA 140 ante.

3 Police Act 1996 s 4(4), Sch 2 para 11(1)(a).

4 Ibid Sch 2 para 11(1)(b). Disqualification of a person by reason of bankruptcy or sequestration ceases on his obtaining a discharge, unless the bankruptcy order is previously annulled or the sequestration of his estate is recalled or reduced in which case it ceases on the date of that event: Sch 2 para 11(3). Disqualification of a person by reason of his having made a composition or arrangement with, or granted a trust deed for, his creditors where he pays his debts in full ceases on the date on which the payment is completed and in any other case five years from the date on which the terms of the deed of composition or arrangement or trust deed are fulfilled: Sch 2 para 11(4). As to bankruptcy see generally BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

5 Ie under the Company Directors Disqualification Act 1986 (see COMPANIES vol 15 (2009) PARA 1575 et seq) or the Companies (Northern Ireland) Order 1989, SI 1989/2404 (NI 18), Pt II.

6 Ie under the Company Directors Disqualification Act 1986 (see COMPANIES vol 15 (2009) PARA 1575 et seq) or the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150 (NI 4).

7 Ie an order under the Insolvency Act 1986 s 429(2)(b): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 910.

8 Police Act 1996 Sch 2 para 11(1)(c) (amended by the Insolvency Act 2000 s 8, Sch 4 para 20(a), (b); and the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941, art 3, Schedule para 7).

9 For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

10 Police Act 1996 Sch 2 para 11(1)(d). The date of a conviction is the ordinary date on which the period allowed for making an appeal or application expires, or if an appeal or application is made, the date on which it is finally disposed of, abandoned, or fails by reason of its non-prosecution: Sch 2 para 11(5).

11 Ibid Sch 2 para 11(2).

12 Ie without prejudice to ibid Sch 2 para 11 (as amended) (see the text to notes 2-11 supra): see Sch 2 paras 13(1), (2), 14(1) (amended by the Criminal Justice and Police Act 2001 s 106(2)).

13 Ie under the Police Act 1996 Sch 2 para 5: see PARA 140 note 11 ante.

14 Ibid Sch 2 para 13(1)(a).

15 As to police areas see PARA 136 ante.

16 For the meaning of 'month' see PARA 140 note 17 ante.

17 Police Act 1996 Sch 2 para 13(1)(b).

18 Ibid Sch 2 para 13(2). As to the extension of the effect of this provision see PARA 145 note 3 post.

19 Ibid Sch 2 para 14(1)(a).

20 Ie under ibid Sch 2 para 8 (as substituted): see PARA 140 ante.

21 Ibid Sch 2 para 14(1)(b) (amended by the Courts Act 2003 s 109(1), Sch 8 para 373(1), (4)(a)). For the meaning of 'lay justice' see PARA 140 note 12 ante.

22 Ie a panel established under the Police Act 1996 Sch 3 (as amended) (see PARA 141 ante) or Sch 3A (as added and amended) (see PARA 142 ante).

23 Ibid Sch 2 para 14(1)(c) (amended by the Courts Act 2003 Sch 8 para 373(1), (4)(b)).

24 Police Act 1996 Sch 2 para 14(1)(d). For the meaning of 'police force' see PARA 102 note 11 ante.

25 Ibid Sch 2 para 14(1)(e).

26 Ibid Sch 2 para 14(1)(f). A person is not regarded for these purposes as an employee of a relevant council by reason of his holding: (1) the post of head teacher or principal of a school, college or other educational institution or establishment which is maintained or assisted by a local education authority; or (2) any other post as a teacher or lecturer in any such school, college, institution or establishment: Sch 2 para 14(2). For the meaning of 'relevant council' see PARA 140 note 7 ante. As to local education authorities see EDUCATION vol 15(1) (2006 Reissue) PARA 20 et seq.

## **UPDATE**

### **139-155 Police Authorities**

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **141-145 Selection of independent members ... Tenure of office**

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 140 NOTE 4.

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#### **145. Tenure of office.**

The following provisions continue in force until 31 March 2008<sup>1</sup>.

A member of a police authority<sup>2</sup> is appointed to hold and vacate office in accordance with the terms of his appointment, subject to the following<sup>3</sup>. A member is appointed for a term of four years<sup>4</sup> or such shorter term as the body appointing him may determine in any particular case<sup>5</sup>. A person may at any time resign his office as member, or as chairman or vice chairman<sup>6</sup>, by notice in writing<sup>7</sup> to the police authority<sup>8</sup> or, in the case of an independent member<sup>9</sup>, to the Secretary of State<sup>10</sup>.

A member of a relevant council<sup>11</sup> appointed to be a member of a police authority<sup>12</sup> ceases to be a member of the authority if he ceases to be a member of the council (and does not on the same day again become a member of the council)<sup>13</sup>. A lay justice<sup>14</sup> appointed to be a member of a police authority<sup>15</sup> ceases to be a member of the authority if he ceases to be a lay justice assigned to a local justice area wholly or partly within the authority's area<sup>16</sup>.

A police authority may remove a member<sup>17</sup> from office by notice in writing if he has been absent from meetings of the authority for a period longer than three consecutive months<sup>18</sup> without the consent of the authority<sup>19</sup>, he has been convicted of a criminal offence but is not disqualified<sup>20</sup> for being a member<sup>21</sup>, or the police authority is satisfied that he is incapacitated by physical or mental illness<sup>22</sup> or that he is otherwise unable or unfit to discharge his functions as a member<sup>23</sup>.

A council or joint committee may remove from office a member of a police authority appointed by it with a view to appointing another in his place if it considers that to do so would further the object<sup>24</sup> that the relevant council or committee members appointed should, so far as practicable, reflect the balance of the parties for the time being prevailing in that council or joint committee<sup>25</sup>.

1 As to the substitution of the Police Act 1996 Sch 2 (as amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 140 note 4 ante. As to membership after 31 March 2008 see PARA 146 post.

2 For the meaning of 'police authority' see PARA 139 note 1 ante. As to membership of police authorities see PARA 140 ante.

3 Police Act 1996 s 4(4), Sch 2 para 15. This provision is expressed to be subject to Sch 2 paras 16-21 (as amended) and the terms of any order made under s 4(2) (see PARA 140 ante): see Sch 2 para 15.

In relation to any time during which, notwithstanding the substitution of Sch 2 (as amended), any provision of Sch 2 (as amended) continues in force (see note 1 supra; and PARA 140 note 4 ante), then: (1) notwithstanding that, in accordance with Sch 2 paras 15, 16, the term of appointment of a lay justice member of a police authority expires on or after 15 January 2007, that appointment is extended to 31 March 2008 (Police and Justice Act 2006 (Supplementary and Transitional Provisions) Order 2006, SI 2006/3365, art 2(1)(a), (2)); and (2) the Police Act 1996 Sch 2 para 13(2) (see PARA 144 ante) and Sch 2 para 18(2) (see the text and notes 14-16 infra) have effect subject to the provision that the appointment of a lay justice member of a police authority is so extended notwithstanding the fact that on or after 15 January 2007 he ceases to be a lay justice assigned to a local justice area wholly or partly within the authority's area by virtue of his name being entered in the supplemental list in accordance with the Courts Act 2003 s 13 (entry of names in the supplemental list: see MAGISTRATES vol 29(2) (Reissue) PARA 519) and notwithstanding the fact that his principal place of work or

residence is consequently no longer in the police area of that police authority (see the Police and Justice Act 2006 (Supplementary and Transitional Provisions) Order 2006, SI 2006/3365, arts 2(1)(b), 4). For the meaning of 'police area' see PARA 136 note 2 ante.

4 Police Act 1996 Sch 2 para 16(1)(a) (amended by the Criminal Justice and Police Act 2001 s 137, Sch 7 Pt 4).

5 Police Act 1996 Sch 2 para 16(1)(b). A person must not, by virtue of Sch 2 para 16(1)(b), be appointed as an independent member under Sch 2 para 5 (see PARA 140 ante) for a term shorter than four years without the approval of the Secretary of State: Sch 2 para 16(2). As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

6 As to the chairman and vice chairmen see PARA 143 ante.

7 For the meaning of 'writing' see PARA 115 note 9 ante.

8 Police Act 1996 Sch 2 para 17(1) (amended by the Criminal Justice and Police Act 2001 s 104(4)(a)).

9 Ie a member appointed under the Police Act 1996 Sch 2 para 5: see PARA 140 ante.

10 See *ibid* Sch 2 para 17(2).

11 For the meaning of 'relevant council' see PARA 140 note 7 ante.

12 Ie under the Police Act 1996 Sch 2 para 2: see PARA 140 ante.

13 *Ibid* Sch 2 para 18(1).

14 For the meaning of 'lay justice' see PARA 140 note 12 ante.

15 Ie under the Police Act 1996 Sch 2 para 8 (as substituted): see PARA 140 ante.

16 *Ibid* Sch 2 para 18(2) (substituted by the Courts Act 2003 s 109(1), Sch 8 para 373(1), (5)). See also note 3 *supra*.

17 Where a police authority removes a member it must give notice of that fact: (1) in the case of a member appointed under the Police Act 1996 Sch 2 para 2 (see PARA 140 ante), to the body which appointed him (Sch 2 para 19(2)(a) (amended by the Courts Act 2003 Sch 8 para 373(1), (6)(a), Sch 10)); and (2) in the case of a member appointed under the Police Act 1996 Sch 2 para 5 or Sch 2 para 8 (see PARA 140 ante), to the Secretary of State (Sch 2 para 19(2)(b) (amended by the Courts Act 2003 Sch 8 para 373(1), (6)(b))).

18 For the meaning of 'month' see PARA 140 note 17 ante.

19 Police Act 1996 Sch 2 para 19(1)(a).

20 Ie under *ibid* Sch 2 para 11: see PARA 144 ante.

21 *Ibid* Sch 2 para 19(1)(b).

22 *Ibid* Sch 2 para 19(1)(c).

23 *Ibid* Sch 2 para 19(1)(d).

24 Ie the object provided for by *ibid* Sch 2 para 4 (as amended): see PARA 140 ante.

25 *Ibid* Sch 2 para 20.

## UPDATE

### 139-155 Police Authorities

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police

authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **141-145 Selection of independent members ... Tenure of office**

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 140 NOTE 4.

### **145 Tenure of office**

NOTE 3--Head (2). Reference to 31 March 2008 is now to 30 September 2008: SI 2006/3365 art 2(2) (amended by SI 2008/619).

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### **146. Membership of police authorities after 31 March 2008.**

The Secretary of State<sup>1</sup> must by regulations<sup>2</sup> make provision in relation to the membership of police authorities<sup>3</sup> in England and Wales<sup>4</sup>. Such regulations must provide for a police authority to consist of: (1) persons who are members of a relevant council<sup>5</sup>; and (2) other persons, including at least one lay justice<sup>6</sup>. Those regulations must specify the number of members falling within heads (1) and (2) above<sup>7</sup>, and secure that the majority of members of a police authority are persons falling within head (1) above<sup>8</sup>. Those regulations may make further provision as to qualification for membership, and may provide for a specified number of the members of a police authority to be persons of a specified description<sup>9</sup>. Those regulations may include provision as to: (a) how a member is to be appointed<sup>10</sup>; (b) disqualification for membership<sup>11</sup>; (c) the tenure of office of a member (including the circumstances in which a member ceases to hold office or may be removed or suspended from office)<sup>12</sup>; (d) re-appointment as a member<sup>13</sup>; (e) the validity of acts and proceedings of a person appointed as a member in the event of his disqualification or lack of qualification<sup>14</sup>; (f) the validity of proceedings of a police authority in the event of a vacancy in membership or of a defect in the appointment of a member or in the composition of the authority<sup>15</sup>; (g) the payment of remuneration and allowances to a member and the reimbursement of expenses<sup>16</sup>.

The Secretary of State must by regulations provide that a police authority is to appoint a chairman from among its members at each annual meeting<sup>17</sup>, and at an annual meeting a police authority may appoint one or more vice-chairmen from among its members<sup>18</sup>.

The Secretary of State may by regulations make provision as to the payment of remuneration and allowances to, and the reimbursement of expenses of, members of the standards committee of a police authority<sup>19</sup>.

Before making regulations under the above provisions<sup>20</sup> the Secretary of State must consult<sup>21</sup>: (i) the Association of Police Authorities<sup>22</sup>; (ii) persons whom he considers to represent the interests of county and district councils in England and county and county borough councils in



Wales<sup>23</sup>; (iii) in the case of regulations that are not to apply to all police authorities, any police authority to which the regulations are to apply and any relevant council in relation to such an authority<sup>24</sup>; and (iv) such other persons as he thinks fit<sup>25</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

2 Regulations under *ibid* Sch 2 (as substituted) may make different provision for different police authorities, and may make transitional, consequential, incidental and supplemental provision or savings: s 4(4), Sch 2 para 7(1), (2) (s 4(4) amended by the Police and Justice Act 2006 s 2, Sch 2 para 1; Police Act 1996 Sch 2 substituted by the Police and Justice Act 2006 Sch 2 para 2). Any power of the Secretary of State to make such regulations is exercisable by statutory instrument: Police Act 1996 s 102. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 2 para 7(3) (as so substituted). At the date at which this volume states the law no such regulations had been made.

3 I.e. police authorities established under *ibid* s 3: see PARA 139 ante.

4 *Ibid* Sch 2 para 1(1) (as substituted: see note 2 supra). Although these provisions came into force on 15 January 2007, the previous provisions (i.e. Schs 2, 3 (both as amended) and Sch 3A (as added and amended): see PARAS 140-145 ante) continue to have effect until 31 March 2008: see PARA 140 note 4 ante.

5 *Ibid* Sch 2 para 1(2)(a) (as substituted: see note 2 supra). The regulations must provide that: (1) in the case of a police authority in relation to which there is only one relevant council, the members falling within Sch 2 para 1(2)(a) (as substituted) are to be appointed by that council (Sch 2 para 2(a) (as so substituted)); (2) in any other case, those members are to be appointed by a joint committee consisting of persons appointed by the relevant councils from among their own members (Sch 2 para 2(b) (as so substituted)). A council is a 'relevant council' in relation to a police authority in England if it is the council for: (a) a county; or (b) a district comprised in an area for which there is no county council, which constitutes, or is wholly within, the authority's police area: Sch 2 para 8(1) (as so substituted). A council is a 'relevant council' in relation to a police authority in Wales if it is the council for a county or county borough which constitutes, or is wholly within, the authority's police area: Sch 2 para 8(2) (as so substituted). For the meaning of 'police area' see PARA 136 note 2 ante. As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

6 *Ibid* Sch 2 para 1(2)(b) (as substituted: see note 2 supra). 'Lay justice' has the meaning given by the Courts Act 2003 s 9 (see MAGISTRATES): Police Act 1996 Sch 2 para 9 (as so substituted). The regulations must provide that the members falling within Sch 2 para 1(2)(b) (as substituted) are to be appointed by the existing members of the authority from among persons on a short-list prepared by a selection panel: Sch 2 para 3(1) (as so substituted). The regulations may make provision as to qualification for membership of a selection panel, and may provide for a specified number of the members of a panel to be persons of a specified description: Sch 2 para 3(2) (as so substituted). The regulations may include provision as to: (1) the number of members of a selection panel; (2) how and by whom a member of a panel is to be appointed; (3) disqualification for membership; (4) the tenure of office of a member of a panel (including the circumstances in which a member ceases to hold office or may be removed or suspended from office); (5) re-appointment as a member of a panel; (6) the conduct of proceedings of a panel, including any procedures that a panel is to follow; (7) the validity of acts and proceedings of a person appointed as a member of a panel in the event of his disqualification or lack of qualification; (8) the validity of proceedings of a panel in the event of a vacancy in membership or of a defect in the appointment of a member or in the composition of the panel; (9) the payment of remuneration and allowances to a member of a panel and the reimbursement of expenses: Sch 2 para 3(3)(a)-(i) (as so substituted).

7 *Ibid* Sch 2 para 1(3)(a) (as substituted: see note 2 supra).

8 *Ibid* Sch 2 para 1(3)(b) (as substituted: see note 2 supra).

9 *Ibid* Sch 2 para 1(4) (as substituted: see note 2 supra).

10 *Ibid* Sch 2 para 1(5)(a) (as substituted: see note 2 supra).

11 *Ibid* Sch 2 para 1(5)(b) (as substituted: see note 2 supra).

12 *Ibid* Sch 2 para 1(5)(c) (as substituted: see note 2 supra).

13 *Ibid* Sch 2 para 1(5)(d) (as substituted: see note 2 supra).

14 *Ibid* Sch 2 para 1(5)(e) (as substituted: see note 2 supra).

15 Ibid Sch 2 para 1(5)(f) (as substituted: see note 2 supra).

16 Ibid Sch 2 para 1(5)(g) (as substituted: see note 2 supra).

17 Ibid Sch 2 para 4(1)(a) (as substituted: see note 2 supra).

18 Ibid Sch 2 para 4(1)(b) (as substituted: see note 2 supra). Such regulations may make further provision about how a chairman or vice-chairman is to be appointed, and provision as to: (1) qualification and disqualification for appointment; (2) the tenure of office of a chairman or vice-chairman (including the circumstances in which a chairman or vice-chairman ceases to hold office or may be removed or suspended from office); (3) eligibility for re-appointment; (4) the validity of acts and proceedings of a person appointed as chairman or vice-chairman in the event of his disqualification or lack of qualification; (5) the validity of proceedings of a police authority in the event of a vacancy in the office of chairman or vice-chairman or of a defect in the appointment of a chairman or vice-chairman; (6) the payment of remuneration and allowances to a chairman or vice-chairman and the reimbursement of expenses: Sch 2 para 4(2)(a)-(f) (as so substituted). As to the making of regulations see note 2 supra.

19 Ibid Sch 2 para 5 (as substituted: see note 2 supra). As to the making of regulations see note 2 supra. As to standards committees see PARA 140 ante.

20 Ie under ibid Sch 2 (as substituted).

21 As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

22 Police Act 1996 Sch 2 para 6(a) (as substituted: see note 2 supra).

23 Ibid Sch 2 para 6(b) (as substituted: see note 2 supra). For the meaning of 'person' see PARA 110 note 6 ante.

24 Ibid Sch 2 para 6(c) (as substituted: see note 2 supra).

25 Ibid Sch 2 para 6(d) (as substituted: see note 2 supra).

## **UPDATE**

### **139-155 Police Authorities**

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **146 Membership of police authorities after [30 September] 2008**

TEXT AND NOTES--See the Police Authority Regulations 2008, SI 2008/630 (amended by SI 2010/421, SI 2010/1070), which make provision in relation to the number of members of police authorities (reg 6), the appointment of members (regs 7, 11), the appointment of a chairman and vice chairman (regs 12, 13), disqualification from membership (regs 14-17), tenure of office (regs 18-26), the validity of acts and proceedings (regs 27, 28), allowances (reg 29), members of standards committees (reg 30), the establishment of selection panels to nominate persons for appointment as

independent members of police authorities (regs 31-37), and the advertisement and making of such nominations by those selection panels (regs 38-45).

NOTE 4--Reference to 31 March 2008 is now to 30 September 2008: see SI 2006/3364; and PARA 140 NOTE 4.

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## ***B. METROPOLITAN POLICE AUTHORITY***

### **147. Membership.**

The police authority for the metropolitan police district is the Metropolitan Police Authority<sup>1</sup>. The Authority consists of 23 members<sup>2</sup>. However, the Secretary of State may by order provide that the number of members of the Authority be a specified odd number not less than 17<sup>3</sup>.

The following provisions continue in force until 2 July 2008<sup>4</sup>. Where the Authority is to consist of 23 members, twelve of those members must be members of the London Assembly appointed by the Mayor of London<sup>5</sup>, seven must be independent members<sup>6</sup>, and four must be lay justices<sup>7</sup>. Where, by virtue of an order<sup>8</sup>, the Authority is to consist of a number of members other than 23: (1) a number which is greater by one than the number of members provided for in heads (2) and (3) below must be members of the London Assembly appointed by the Mayor of London<sup>9</sup>; (2) such number as may be prescribed by the order, not exceeding one third of the total membership, must be independent members<sup>10</sup>; and (3) the remainder must be lay justices<sup>11</sup>. The acts and proceedings of any person appointed to be a member or chairman or vice-chairman<sup>12</sup> of the Authority and acting in that office are, notwithstanding his disqualification<sup>13</sup> or want of qualification, as valid and effectual as if he had been qualified<sup>14</sup>. The proceedings of the Authority are not invalidated by a vacancy in the membership of the Authority or in the office of chairman, by a vacancy for a vice-chairman, or by any defect in the appointment of a person as a member or as chairman or vice-chairman<sup>15</sup>.

The Authority must establish a standards committee<sup>16</sup> and must also adopt a code of conduct setting out the standards of conduct which are expected of its members<sup>17</sup>. A member of the Authority is entitled to time off work for the purpose of attending meetings of the Authority or a committee of the Authority and for discharging functions in connection with the Authority<sup>18</sup>.

1 See the Police Act 1996 s 5B (as added); and PARA 137 ante.

2 Ibid s 5C(1) (added by the Greater London Authority Act 1999 s 310(1)). As to tenure of office see PARA 153 post. As to allowances for members see PARA 154 post.

The Police Act 1996 Sch 2A (as added and amended) was substituted, and Sch 3 (as amended) and Sch 3A (as added and amended) were repealed, with effect from 15 January 2007 (see the Police and Justice Act 2006 ss 2, 52, Sch 2 paras 4, 6, Sch 15 Pt 1(B); and the Police and Justice Act 2006 (Commencement No 1, Transitional and Saving Provisions) Order 2006, SI 2006/3364, art 2), and the Police Act 1996 Sch 2A (as added and substituted) (see PARA 155 post) has effect in relation to the Metropolitan Police Authority and the appointment of its members (see s 5C(6) (as so added; and amended by the Police and Justice Act 2006 s 2, Sch 2 para 3)). However, until 2 July 2008 the Police Act 1996 Sch 2A (as added and amended) (see the text and notes 5-15 infra; and PARAS 148-154 post) continues in force, save that Sch 2A paras 1-5 (as added) (see the text and notes 5-11 infra; and PARAS 148-150 post) only apply to appointments that take effect before 3 July 2008; and likewise Sch 3 (as amended) (see PARA 149 post) and Sch 3A (as added and amended) (see PARA 150 post) continue in force until 2 July 2008: see the Police and Justice Act 2006 (Commencement No 1, Transitional and Saving Provisions) Order 2006, SI 2006/3364, art 3(2), (3)(b).

3 See note 2 supra. As to membership after 2 July 2008 see PARA 155 post.

4 Police Act 1996 s 5C(2) (as added: see note 2 supra). Before making such an order reducing the number of members of the Metropolitan Police Authority, the Secretary of State must consult the Greater London Authority and the Metropolitan Police Authority: s 5C(3) (as so added; and amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 372(a), (b), Sch 10). An order which reduces the number of members of the Metropolitan Police Authority may include provision as to the termination of the appointment of the existing members of the Authority and the making of new appointments or re-appointments: Police Act 1996 s 5C(4) (as so added). Any power of the Secretary of State to make such an order is exercisable by statutory instrument: s 102. A statutory instrument containing such an order must be laid before Parliament after being made: s 5C(5) (as so added). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post. As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627. As to the Greater London Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 34, 79 et seq.

5 Ibid s 5C(6) (as added: see note 2 supra), Sch 2A para 1(1)(a) (Sch 2A added by the Greater London Authority Act 1999 s 310(2), Sch 26). As to the appointment of members by the Mayor of London see PARA 148 post. As to the Mayor of London and the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 81, 82.

6 See the Police Act 1996 Sch 2A para 1(1)(b) (as added: see note 5 supra). As to the appointment of independent members see PARA 149 post.

7 Ibid Sch 2A para 1(1)(c) (as added (see note 5 supra); and amended by the Courts Act 2003 Sch 8 para 374(1), (2)). 'Lay justice' has the meaning given by the Courts Act 2003 s 9 (see MAGISTRATES): Police Act 1996 Sch 2A para 22 (as so added; and substituted by the Courts Act 2003 Sch 8 para 374(1), (7)). As to the appointment of lay justice members see PARA 150 post.

8 Ie under the Police Act 1996 s 5C(2) (as added): see the text to notes 3-4 supra.

9 Ibid Sch 2A para 1(2)(a) (as added: see note 5 supra).

10 Ibid Sch 2A para 1(2)(b) (as added: see note 5 supra).

11 Ibid Sch 2A para 1(2)(c) (as added (see note 5 supra); and amended by the Courts Act 2003 Sch 8 para 374(1), (2)).

12 As to the chairman and vice chairmen see PARA 151 post.

13 As to disqualification for membership see PARA 152 post.

14 Police Act 1996 Sch 2A para 18 (as added (see note 5 supra); and amended by the Criminal Justice and Police Act 2001 s 104(4)(b)).

15 Police Act 1996 Sch 2A para 19 (as added (see note 5 supra); and amended by the Criminal Justice and Police Act 2001 s 104(5)).

16 See the Local Government Act 2000 s 53; and LOCAL GOVERNMENT vol 69 (2009) PARA 238 et seq.

17 See ibid s 51; and LOCAL GOVERNMENT vol 69 (2009) PARA 235. The Secretary of State has issued a model code of conduct, all of the provisions of which are mandatory: see the Police Authorities (Model Code of Conduct) Order 2001, SI 2001/3578.

18 See the Employment Rights Act 1996 s 50(2), (3) (as amended); and EMPLOYMENT vol 39 (2009) PARA 312.

## UPDATE

### 139-155 Police Authorities

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities;

and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **147-155 Metropolitan Police Authority**

In respect of appointments of members of the Metropolitan Police Authority that take effect on or after 1 October 2008, see the Metropolitan Police Authority Regulations 2008, SI 2008/631 (amended by SI 2010/421).

### **147 Membership**

NOTE 2--References to 2 July 2008 are now to 30 September 2008 and reference to 3 July 2008 is now to 1 October 2008: SI 2006/3364 art 3(2), (3)(b) (amended by SI 2008/617).

TEXT AND NOTE 4--Now 30 September 2008: see NOTE 2.

NOTE 17--SI 2001/3578 replaced by Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159.

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### **148. Appointment of members by the Mayor of London.**

The following provisions continue in force until 2 July 2008<sup>1</sup>.

The members of the Metropolitan Police Authority to be appointed by the Mayor of London<sup>2</sup> must be appointed by the Mayor of London in accordance with the following provisions<sup>3</sup>.

One of those members must be the Deputy Mayor, except where he is disabled from so acting<sup>4</sup> or unless he is disqualified<sup>5</sup> for being appointed as or being a member of the Authority<sup>6</sup>. The Mayor<sup>7</sup> must ensure that, so far as practicable, in the case of the members of the Authority who are members of the London Assembly appointed under these provisions, the proportion who are members of any given party is the same as the proportion of the members of the London Assembly who are members of that party<sup>8</sup>.

1 As to the substitution of the Police Act 1996 Sch 2A (as added and amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 147 note 2 ante. As to membership after 2 July 2008 see PARA 155 post.

2 I.e. the members referred to in *ibid* s 5C(6), Sch 2A para 1(1)(a) (as added) or Sch 2A para 1(2)(a) (as added): see PARA 147 ante. As to the Metropolitan Police Authority see PARA 147 ante.

3 *Ibid* Sch 2A para 2(1) (Sch 2A added by the Greater London Authority Act 1999 s 310(2), Sch 26). Any functions exercisable by the Mayor of London under the Police Act 1996 Sch 2A (as added) may only be exercised by him personally: Sch 2A para 21 (as so added). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

4 I.e. as provided by the Greater London Authority Act 1999 s 37, Sch 4 paras 9(2)(b), 17(b): see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 124, 129.

5 le under the Police Act 1996 Sch 2A para 7 (as added): see PARA 152 post.

6 Ibid Sch 2A para 2(2) (as added: see note 3 supra). As to the Deputy Mayor see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 83.

7 Or in a case where the Greater London Authority Act 1999 Sch 4 paras 9(2)(b), 17(b) (see note 4 supra) apply, the Chair of the London Assembly: Police Act 1996 Sch 2A para 2(3) (as added: see note 3 supra). As to the London Assembly and the Chair of the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 82, 84.

8 Ibid Sch 2A para 2(3) (as added (see note 3 supra); and amended by the Criminal Justice and Police Act 2001 s 105(2)). 'Party' means political party: see *R (on the application of East Riding Yorkshire Council) v Joint Committee for the Purpose of Making Appointments to the Humberside Police Authority* [2001] LGR 292, [2000] All ER (D) 2358.

## UPDATE

### 139-155 Police Authorities

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### 147-155 Metropolitan Police Authority

In respect of appointments of members of the Metropolitan Police Authority that take effect on or after 1 October 2008, see the Metropolitan Police Authority Regulations 2008, SI 2008/631 (amended by SI 2010/421).

### 148-154 Appointment of members by the Mayor of London ... Allowances for members

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 147 NOTE 2.

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### 149. Appointment of independent members.

The following provisions continue in force until 2 July 2008<sup>1</sup>.

The independent members of the Metropolitan Police Authority<sup>2</sup> must be appointed in accordance with the following provisions<sup>3</sup>.

One such member must be appointed by the Secretary of State<sup>4</sup>. The remainder must be appointed by the members of the Authority appointed by the Mayor of London<sup>5</sup> or the lay justice members<sup>6</sup> from among persons on a short-list prepared<sup>7</sup> by the Secretary of State<sup>8</sup>. The Authority must arrange for a notice to be published, in such manner as appears to it to be appropriate, stating the name of each of its independent members appointed<sup>9</sup> under these provisions<sup>10</sup> and such other information relating to any such member as it considers appropriate<sup>11</sup>. The Authority must send a copy of any such notice to the Secretary of State<sup>12</sup>.

1 As to the substitution of the Police Act 1996 Sch 2A (as added and amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 147 note 2 ante. As to membership after 2 July 2008 see PARA 155 post.

2 I.e. the members referred to in *ibid* s 5C(6), Sch 2A para 1(1)(b) (as added) or Sch 2A para 1(2)(b) (as added); see PARA 147 ante. As to the Metropolitan Police Authority see PARA 147 ante.

3 *Ibid* Sch 2A para 3(1) (Sch 2A added by the Greater London Authority Act 1999 s 310(2), Sch 26).

4 Police Act 1996 Sch 2A para 3(2) (as added: see note 3 *supra*). As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

5 I.e. under *ibid* Sch 2A para 2 (as added and amended): see PARA 148 ante.

6 *Ibid* Sch 2A para 3(3)(a) (as added: see note 3 *supra*). The lay justice members are those members appointed under Sch 2A para 5 (as added and amended): see PARA 150 post.

7 I.e. in accordance with *ibid* s 4(4), Sch 3 (as amended): see PARA 141 ante. As to the constitution of the selection panel in relation to the appointment of the first members of the Metropolitan Police Authority see Sch 2A para 3(4)-(6) (as added: see note 3 *supra*).

8 *Ibid* Sch 2A para 3(3)(b) (as added: see note 3 *supra*).

9 I.e. under *ibid* Sch 2A para 3(2) or (3) (as added): see the text to notes 4-8 *supra*.

10 *Ibid* Sch 2A para 4(1)(a) (as added: see note 3 *supra*).

11 *Ibid* Sch 2A para 4(1)(b) (as added: see note 3 *supra*).

12 *Ibid* Sch 2A para 4(2) (as added: see note 3 *supra*).

## UPDATE

### 139-155 Police Authorities

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### 147-155 Metropolitan Police Authority

In respect of appointments of members of the Metropolitan Police Authority that take effect on or after 1 October 2008, see the Metropolitan Police Authority Regulations 2008, SI 2008/631 (amended by SI 2010/421).

### **148-154 Appointment of members by the Mayor of London ... Allowances for members**

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 147 NOTE 2.

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### **150. Appointment of lay justices.**

The following provisions continue in force until 2 July 2008<sup>1</sup>.

The lay justice members of the Metropolitan Police Authority<sup>2</sup> must be lay justices, each of whom is assigned to a local justice area wholly or partly within the metropolitan police district<sup>3</sup>. They must be appointed by the members of the Authority appointed by the Mayor of London<sup>4</sup> or the independent members<sup>5</sup> from among persons on a short-list prepared in accordance with<sup>6</sup> the statutory provisions<sup>7</sup>.

1 As to the substitution of the Police Act 1996 Sch 2A (as added and amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 147 note 2 ante. As to membership after 2 July 2008 see PARA 155 post.

2 I.e. the members referred to in *ibid* s 5C(6), Sch 2A para 1(1)(c) (as added) or Sch 2A para 1(2)(c) (as added): see PARA 147 ante. For the meaning of 'lay justice' see PARA 147 note 7 ante. As to the Metropolitan Police Authority see PARA 147 ante.

3 *Ibid* Sch 2A para 5(1) (Sch 2A added by the Greater London Authority Act 1999 s 310(2), Sch 26; Police Act 1996 Sch 2A para 5 substituted by the Courts Act 2003 s 109(1), Sch 8 para 374(1), (3)). As to the metropolitan police district see PARA 137 ante. As to local justice areas see MAGISTRATES.

4 I.e. under the Police Act 1996 Sch 2A para 2 (as added and amended): see PARA 148 ante.

5 *Ibid* Sch 2A para 5(2)(a) (as added and substituted: see note 3 supra). The independent members are those appointed under Sch 2A para 3 (as added): see PARA 149 ante.

6 I.e. in accordance with *ibid* Sch 3A (as added and amended): see PARA 142 ante.

7 *Ibid* Sch 2A para 5(2)(b) (as added and substituted: see note 3 supra).

## **UPDATE**

### **139-155 Police Authorities**

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such



authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **147-155 Metropolitan Police Authority**

In respect of appointments of members of the Metropolitan Police Authority that take effect on or after 1 October 2008, see the Metropolitan Police Authority Regulations 2008, SI 2008/631 (amended by SI 2010/421).

### **148-154 Appointment of members by the Mayor of London ... Allowances for members**

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 147 NOTE 2.

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### **151. Chairman and vice chairmen.**

The following provisions continue in force until 2 July 2008<sup>1</sup>.

The Metropolitan Police Authority<sup>2</sup> must at each annual meeting, as the first business transacted at the meeting<sup>3</sup>, appoint a chairman from among its members<sup>4</sup>. On a casual vacancy occurring in the office of chairman, an appointment to fill the vacancy must be made at the next meeting of the Authority (other than an extraordinary meeting)<sup>5</sup> or, if that meeting is held within 14 days after the date on which the vacancy occurs and is not an annual meeting, not later than the next following meeting<sup>6</sup>.

At an annual meeting the Authority may appoint one or more vice-chairmen from among its members<sup>7</sup>. The making of such appointments must be the first business transacted at the meeting after the appointment of the chairman<sup>8</sup>. Where a vice-chairman ceases to hold office at any time between annual meetings, the Authority may make an appointment to fill the vacancy at any meeting of the Authority held more than 14 days after the occurrence of the vacancy<sup>9</sup>. Subject to any standing orders made by the Authority, anything authorised or required to be done by, to or before the chairman may be done by, to or before any vice-chairman of the Authority<sup>10</sup>.

1 As to the substitution of the Police Act 1996 Sch 2A (as added and amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 147 note 2 ante. As to membership after 2 July 2008 see PARA 155 post.

2 As to the Metropolitan Police Authority see PARA 147 ante.

3 Police Act 1996 s 5C(6), Sch 2A para 6(2) (s 5C added by the Greater London Authority Act 1999 s 310(1); Police Act 1996 Sch 2A added by the Greater London Authority Act 1999 s 310(2), Sch 26).

4 Police Act 1996 Sch 2A para 6(1) (as added: see note 3 supra). As to membership of the Metropolitan Police Authority see PARA 147 ante.

- 5 Ibid Sch 2A para 6(3)(a) (as added: see note 3 supra).
- 6 Ibid Sch 2A para 6(3)(b) (as added: see note 3 supra).
- 7 Ibid Sch 2A para 6A(1) (Sch 2A as added (see note 3 supra); Sch 2A para 6A added by the Criminal Justice and Police Act 2001 s 104(2)).
- 8 Police Act 1996 Sch 2A para 6A(2) (as added: see notes 3, 7 supra).
- 9 Ibid Sch 2A para 6A(3) (as added: see notes 3, 7 supra).
- 10 Ibid Sch 2A para 6A(4) (as added: see notes 3, 7 supra).

## **UPDATE**

### **139-155 Police Authorities**

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **147-155 Metropolitan Police Authority**

In respect of appointments of members of the Metropolitan Police Authority that take effect on or after 1 October 2008, see the Metropolitan Police Authority Regulations 2008, SI 2008/631 (amended by SI 2010/421).

### **148-154 Appointment of members by the Mayor of London ... Allowances for members**

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 147 NOTE 2.

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## **152. Disqualification.**

The following provisions continue in force until 2 July 2008<sup>1</sup>.

A person is disqualified for being appointed as or being a member of the Metropolitan Police Authority<sup>2</sup> if:

- 25 (1) he holds any paid office or employment, appointments to which are or may be made or confirmed by the Authority or any committee or sub-committee of the

Authority, or by a joint committee on which the Authority is represented, or by a person holding any such office or employment<sup>3</sup>;

- 26 (2) a bankruptcy order has been made against him or his estate has been sequestrated or he has made a composition or arrangement with, or granted a trust deed for, his creditors<sup>4</sup>;
- 27 (3) he is subject to a director's disqualification order<sup>5</sup> or disqualification undertaking<sup>6</sup>, or to an order<sup>7</sup> relating to the failure to pay under a county court administration order<sup>8</sup>; or
- 28 (4) he has within five years before the date of his appointment or since his appointment been convicted in the United Kingdom<sup>9</sup>, the Channel Islands or the Isle of Man of an offence, and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months<sup>10</sup>.

A paid employee of a police authority<sup>11</sup> who is employed under the direction of a joint board, joint authority or joint committee on which that police authority is represented<sup>12</sup>, and any member of which is appointed on the nomination of some other police authority<sup>13</sup>, is disqualified for being appointed as, or being, a member of that other police authority if either of those police authorities is the Metropolitan Police Authority<sup>14</sup>.

Without prejudice to the above provisions, in relation to membership of the Authority as an independent member<sup>15</sup>, a person is disqualified:

- 29 (a) for being appointed as a member if:
  - 5
  - 10. (i) he has not yet attained the age of 21 years<sup>16</sup>; or
  - 11. (ii) neither his principal or only place of work, nor his principal or only place of residence, has been in the metropolitan police district during the whole of the period of 12 months<sup>17</sup> ending with the day of appointment<sup>18</sup>;
- 6
- 30 (b) for being a member so appointed if, at any time, neither his principal or only place of work, nor his principal or only place of residence, is within the metropolitan police district<sup>19</sup>;
- 31 (c) for being appointed as a member, and for being a member so appointed, if he is:
  - 7
  - 12. (i) a member of a London borough council<sup>20</sup>;
  - 13. (ii) the Mayor of London<sup>21</sup>;
  - 14. (iii) a member of the London Assembly<sup>22</sup>;
  - 15. (iv) a lay justice<sup>23</sup> assigned to a local justice area which is wholly or partly within the metropolitan police district<sup>24</sup>;
  - 16. (v) a member of the selection panel<sup>25</sup> for independent members for the metropolitan police district<sup>26</sup>;
  - 17. (vi) a member of a police force<sup>27</sup>;
  - 18. (vii) an officer or employee of a police authority<sup>28</sup>; or
  - 19. (viii) an officer or employee of the Greater London Authority or of a London borough council<sup>29</sup>.

8

1 As to the substitution of the Police Act 1996 Sch 2A (as added and amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 147 note 2 ante. As to membership after 2 July 2008 see PARA 155 post.

2 As to the Metropolitan Police Authority see PARA 147 ante. As to membership of the Metropolitan Police Authority see PARA 147 ante.

3 Police Act 1996 s 5C(6), Sch 2A para 7(1)(a) (s 5C added by the Greater London Authority Act 1999 s 310(1); Police Act 1996 Sch 2A added by the Greater London Authority Act 1999 s 310(2), Sch 26).

4 Police Act 1996 Sch 2A para 7(1)(b) (as added: see note 3 supra). Where a person is disqualified by reason that a bankruptcy order has been made against him or his estate has been sequestrated, the disqualification ceases: (1) unless the bankruptcy order is previously annulled or the sequestration of his estate is recalled or reduced, on his obtaining a discharge (Sch 2A para 7(3)(a) (as so added)); and (2) if the bankruptcy order is annulled or the sequestration of his estate is recalled or reduced, on the date of that event (Sch 2A para 7(3)(b) (as so added)). Where a person is disqualified by reason of his having made a composition or arrangement with, or granted a trust deed for, his creditors and he pays his debts in full, the disqualification ceases on the date on which the payment is completed, and in any other case it ceases at the end of the period of five years beginning with the date on which the terms of the deed of composition or arrangement or trust deed are fulfilled: Sch 2A para 7(4) (as so added). As to bankruptcy and arrangements and compositions with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

5 Ie under the Company Directors Disqualification Act 1986 (see COMPANIES vol 15 (2009) PARA 1575 et seq) or the Companies (Northern Ireland) Order 1989, SI 1989/2404 (NI 18), Pt II.

6 Ie under the Company Directors Disqualification Act 1986 (see COMPANIES vol 15 (2009) PARA 1575 et seq) or the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150 (NI 4).

7 Ie an order under the Insolvency Act 1986 s 429(2)(b): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 910.

8 Police Act 1996 Sch 2A para 7(1)(c) (as added (see note 3 supra); and amended by the Insolvency Act 2000 s 8, Sch 4 para 20(a), (b); and the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941, art 3, Schedule para 7).

9 For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

10 Police Act 1996 Sch 2A para 7(1)(d) (as added: see note 3 supra). For these purposes, the date of a conviction is taken to be the ordinary date on which the period allowed for making an appeal or application expires or, if an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its non-prosecution: Sch 2A para 7(5) (as so added).

11 For the meaning of 'police authority' see PARA 139 note 1 ante.

12 Police Act 1996 Sch 2A para 7(2)(a) (as added: see note 3 supra).

13 Ibid Sch 2A para 7(2)(b) (as added: see note 3 supra).

14 Ibid Sch 2A para 7(2) (as added: see note 3 supra).

15 Ie a member appointed under ibid Sch 2A para 3 (as added): see PARA 149 ante.

16 Ibid Sch 2A para 8(1)(a) (as added: see note 3 supra).

17 For the meaning of 'month' see PARA 140 note 17 ante.

18 Police Act 1996 Sch 2A para 8(1)(b) (as added: see note 3 supra). As to the metropolitan police district see PARA 137 ante.

19 Ibid Sch 2A para 8(2) (as added: see note 3 supra). As to the extension of the effect of this provision see PARA 153 note 4 post.

20 Ibid Sch 2A para 9(1)(a) (as added: see note 3 supra). As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq.

21 Ibid Sch 2A para 9(1)(b) (as added: see note 3 supra). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

22 Ibid Sch 2A para 9(1)(c) (as added: see note 3 supra). As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82.

23 For the meaning of 'lay justice' see PARA 147 note 7 ante.

24 Police Act 1996 Sch 2A para 9(1)(d) (as added (see note 3 supra); and amended by the Courts Act 2003 s 109(1), Sch 8 para 374(1), (4)). As to local justice areas see MAGISTRATES vol 29(2) (Reissue) PARA 591 et seq.

- 25 le the panel established under the Police Act 1996 s 4(4), Sch 3 (as amended): see PARA 141 ante.
- 26 Ibid Sch 2A para 9(1)(e) (as added: see note 3 supra).
- 27 Ibid Sch 2A para 9(1)(f) (as added: see note 3 supra). For the meaning of 'police force' see PARA 102 note 11 ante.
- 28 Ibid Sch 2A para 9(1)(g) (as added: see note 3 supra).
- 29 Ibid Sch 2A para 9(1)(h) (as added: see note 3 supra). A person is not regarded for these purposes as an employee of a London borough council by reason of his holding: (1) the post of head teacher or principal of a school, college or other educational institution or establishment which is maintained or assisted by a local education authority (Sch 2A para 9(2)(a) (as so added)); or (2) any other post as a teacher or lecturer in any such school, college, institution or establishment (Sch 2A para 9(2)(b) (as so added)). As to the Greater London Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 34, 79 et seq. As to local education authorities see EDUCATION vol 15(1) (2006 Reissue) PARA 20 et seq.

## UPDATE

### 139-155 Police Authorities

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### 147-155 Metropolitan Police Authority

In respect of appointments of members of the Metropolitan Police Authority that take effect on or after 1 October 2008, see the Metropolitan Police Authority Regulations 2008, SI 2008/631 (amended by SI 2010/421).

### 148-154 Appointment of members by the Mayor of London ... Allowances for members

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 147 NOTE 2.

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### 153. Tenure of office.

The following provisions continue in force until 2 July 2008<sup>1</sup>.

Subject to the provisions below and to any order made by the Secretary of State<sup>2</sup>, a person holds and vacates office as a member of the Metropolitan Police Authority<sup>3</sup> in accordance with the terms of his appointment<sup>4</sup>. A person is appointed to hold office as a member for a term of four years<sup>5</sup>, or such shorter term as the person or body appointing him may determine in any particular case<sup>6</sup>. A person may at any time resign his office as a member, or as chairman or vice-chairman<sup>7</sup>, by notice in writing<sup>8</sup> to the Authority<sup>9</sup>.

A member of the London Assembly appointed<sup>10</sup> to be a member of the Authority must cease to be a member of the Authority if he ceases to be a member of the London Assembly (and does not immediately again become a member of the London Assembly)<sup>11</sup>. The Deputy Mayor appointed<sup>12</sup> to be a member of the Authority must cease to be a member of that Authority if he ceases to be Deputy Mayor<sup>13</sup>. A lay justice<sup>14</sup> appointed<sup>15</sup> to be a member of the Authority must cease to be a member of the Authority if he ceases to be a lay justice assigned to a local justice area wholly or partly within the metropolitan police district<sup>16</sup>.

The Authority may remove a member from office by notice in writing if: (1) he has been absent from meetings of the Authority for a period longer than three consecutive months<sup>17</sup> without the consent of the Authority<sup>18</sup>; (2) he has been convicted of a criminal offence (but is not disqualified<sup>19</sup> for being a member)<sup>20</sup>; (3) the Authority is satisfied that the member is incapacitated by physical or mental illness<sup>21</sup>, or that the member is otherwise unable or unfit to discharge his functions as a member<sup>22</sup>. Where the Authority removes a member, it must give notice of that fact to the Mayor of London, in the case of a member appointed by him<sup>23</sup>; and, in the case of any other member, it must give notice to the Secretary of State<sup>24</sup>. The Mayor of London may remove from office a member of the Authority appointed by him with a view to appointing another in his place if he considers that to do so would further the object<sup>25</sup> of the proportionate representation of party members<sup>26</sup>.

If the chairman or vice-chairman of the Authority ceases to be a member, he must also cease to be chairman or vice-chairman<sup>27</sup>.

A person who ceases to be a member, otherwise than by virtue of his removal by the Authority<sup>28</sup>, or who ceases to be chairman or vice-chairman may (if otherwise eligible) be re-appointed<sup>29</sup>.

1 As to the substitution of the Police Act 1996 Sch 2A (as added and amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 147 note 2 ante. As to membership after 2 July 2008 see PARA 155 post.

2 In any order under *ibid* s 5C(2) (as added): see PARA 147 ante. As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

3 As to the Metropolitan Police Authority see PARA 147 ante. As to membership of the Authority see PARA 147 ante.

4 Police Act 1996 s 5C(6), Sch 2A para 10 (s 5C added by the Greater London Authority Act 1999 s 310(1); Police Act 1996 Sch 2A added by the Greater London Authority Act 1999 s 310(2), Sch 26). In relation to any time during which, notwithstanding the substitution of the Police Act 1996 Sch 2A (as added and amended), any provision of Sch 2A (as added and amended) continues in force (see note 1 *supra*; and PARA 147 note 2 ante): (1) the provisions of Sch 2A paras 10, 11 (as added) have effect so that where, in accordance with those provisions, the term of appointment of a lay justice member of the Metropolitan Police Authority expires on or after 15 January 2007, that appointment is extended to 2 July 2008 (see the Police and Justice Act 2006 (Supplementary and Transitional Provisions) Order 2006, SI 2006/3365, art 3(1)(a), (2)); and (2) the provisions of the Police Act 1996 Sch 2A para 8(2) (as added) (see PARA 152 ante) and Sch 2A para 13(3) (as added) (see the text and notes 14-16 *infra*) have effect so that the appointment of a lay justice member of the Authority is so extended notwithstanding the fact that on or after 15 January 2007 he ceases to be a lay justice assigned to a local justice area wholly or partly within the Authority's area by virtue of his name being entered in the supplemental list in accordance with the Courts Act 2003 s 13 (entry of names in the supplemental list: see *MAGISTRATES* vol 29(2) (Reissue) PARA 519) and notwithstanding the fact that his principal place of work or residence is consequently no longer in the police area of the Metropolitan Police Authority (see the Police and Justice Act 2006 (Supplementary and Transitional Provisions) Order 2006, SI 2006/3365, arts 3(1)(b), 4).

- 5 Police Act 1996 Sch 2A para 11(1)(a) (as added: see note 4 supra). See also note 4 supra.
- 6 Ibid Sch 2A para 11(1)(b) (as added: see note 4 supra). See also note 4 supra. A person must not, by virtue of Sch 2A para 11(1)(b) (as added), be appointed an independent member under Sch 2A para 3(3) (as added) (see PARA 149 ante) for a term shorter than four years without the approval of the Secretary of State: Sch 2A para 11(2) (as so added).
- 7 As to the chairman and vice chairmen see PARA 151 ante.
- 8 For the meaning of 'writing' see PARA 115 note 9 ante.
- 9 Police Act 1996 Sch 2A para 12(1) (as added (see note 4 supra); and amended by the Criminal Justice and Police Act 2001 s 104(4)(b)). Where an independent member appointed under the Police Act 1996 Sch 2A para 3 (as added) (see PARA 149 ante) resigns his office as a member, he must send a copy of the notice to the Secretary of State: Sch 2A para 12(2) (as so added).
- 10 Ie under ibid Sch 2A para 2 (as added): see PARA 148 ante. As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82.
- 11 Ibid Sch 2A para 13(1) (as added: see note 4 supra).
- 12 Ie under ibid Sch 2A para 2 (as added): see PARA 148 ante. As to the Deputy Mayor see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 83.
- 13 Ibid Sch 2A para 13(2) (as added: see note 4 supra).
- 14 For the meaning of 'lay justice' see PARA 147 note 7 ante.
- 15 Ie under the Police Act 1996 Sch 2A para 5 (as added and amended): see PARA 150 ante.
- 16 Ibid Sch 2A para 13(3) (Sch 2A as added (see note 4 supra); and Sch 2A para 13(3) substituted by the Courts Act 2003 s 109(1), Sch 8 para 374(1), (5)). See also note 4 supra. As to local justice areas see MAGISTRATES vol 29(2) (Reissue) PARA 591 et seq. As to the metropolitan police district see PARA 137 ante.
- 17 For the meaning of 'month' see PARA 140 note 17 ante.
- 18 Police Act 1996 Sch 2A para 14(1)(a) (as added: see note 4 supra).
- 19 Ie under ibid Sch 2A para 7 (as added and amended): see PARA 152 ante.
- 20 Ibid Sch 2A para 14(1)(b) (as added: see note 4 supra).
- 21 Ibid Sch 2A para 14(1)(c) (as added: see note 4 supra).
- 22 Ibid Sch 2A para 14(1)(d) (as added: see note 4 supra).
- 23 See ibid Sch 2A para 14(2)(a) (as added (see note 4 supra); and amended by the Courts Act 2003 Sch 8 para 374(1), (6)(a), Sch 10). As to members appointed by the Mayor of London see PARA 148 ante. As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.
- 24 See the Police Act 1996 Sch 2A para 14(2)(b) (as added (see note 4 supra); and amended by the Courts Act 2003 Sch 8 para 374(1), (6)(b)).
- 25 Ie the object provided for by the Police Act 1996 Sch 2A para 2(3) (as added): see PARA 148 ante.
- 26 Ibid Sch 2A para 15 (as added: see note 4 supra). Any functions exercisable by the Mayor of London under Sch 2A (as added and amended) may only be exercised by him personally: Sch 2A para 21 (as so added).
- 27 Ibid Sch 2A para 16 (as added (see note 4 supra); and amended by the Criminal Justice and Police Act 2001 s 104(4)(b)).
- 28 Ie by virtue of the Police Act 1996 Sch 2A para 14 (as added and amended): see the text to notes 17-24 supra.
- 29 Ibid Sch 2A para 17 (as added (see note 4 supra); and amended by the Criminal Justice and Police Act 2001 s 104(4)(b); repealed).

## **UPDATE**

### **139-155 Police Authorities**

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **147-155 Metropolitan Police Authority**

In respect of appointments of members of the Metropolitan Police Authority that take effect on or after 1 October 2008, see the Metropolitan Police Authority Regulations 2008, SI 2008/631 (amended by SI 2010/421).

### **148-154 Appointment of members by the Mayor of London ... Allowances for members**

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 147 NOTE 2.

### **153 Tenure of office**

NOTE 4--Head (1). Reference to 2 July 2008 is now to 30 September 2008: SI 2006/3365 art 3(2) (amended by SI 2008/619). See also SI 2006/3365 art 3(3) (added by SI 2008/619).

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### **154. Allowances for members.**

The following provisions continue in force until 2 July 2008<sup>1</sup>.

The Metropolitan Police Authority<sup>2</sup> may make to its chairman, vice-chairmen and other members<sup>3</sup> such payments by way of reimbursement of expenses and allowances as that Authority may determine<sup>4</sup>. No such payment may be made except in accordance with arrangements published by the Authority not more than 12 months<sup>5</sup> before the making of the payment<sup>6</sup>. The Secretary of State may by regulations impose such limits as may be provided for by or under the regulations on the payments that may be made<sup>7</sup>. In any event, no payment by way of an allowance may be made to any member of the Authority who is also a member of the London Assembly<sup>8</sup>. Payments may differ according to whether the recipient is the chairman, a



vice chairman or one of the other members of the Authority, or is appointed as an independent member<sup>9</sup> or as a lay justice<sup>10</sup> member<sup>11</sup>.

1 As to the substitution of the Police Act 1996 Sch 2A (as added and amended) and the repeal with savings of Sch 3 (as amended) and Sch 3A (as added and amended) see PARA 147 note 2 ante. As to membership after 2 July 2008 see PARA 155 post.

2 As to the Metropolitan Police Authority see PARA 147 ante.

3 The Police Act 1996 Sch 2A para 20A (as added and amended) has effect in relation to the Metropolitan Police Authority as if references to the members of that Authority included references to persons who are not members of that Authority but are members of the Authority's standards committee; and the power to make different payments according to the recipient includes power to make different payments to persons who are not members of that Authority but are members of the Authority's standards committee: s 5C(6), Sch 2A para 20B (s 5C added by the Greater London Authority Act 1999 s 310(1); Police Act 1996 Sch 2A added by the Greater London Authority Act 1999 s 310(2), Sch 26; Police Act 1996 Sch 2A paras 20A, 20B added by the Criminal Justice and Police Act 2001 s 107(3)). As to membership of the Metropolitan Police Authority and as to the Authority's standards committee see PARA 147 ante. As to the chairman and vice chairmen see PARA 151 ante.

4 Police Act 1996 Sch 2A para 20A(1) (Sch 2A para 20A as added (see note 3 supra); Sch 2A para 20A(1) amended by the Police Reform Act 2002 s 94(1)(a), (2)(b)).

5 For the meaning of 'month' see PARA 140 note 17 ante.

6 Police Act 1996 Sch 2A para 20A(2) (as added: see note 3 supra). The Authority may from time to time revise any such arrangements; but no revisions take effect until published by that Authority: Sch 2A para 20A(3) (as so added). It is the duty of the Authority, when making or revising any such arrangements, to have regard to any guidance given by the Secretary of State about the reimbursement of expenses or about the payment of allowances: Sch 2A para 20A(4) (as so added; and amended by the Police Reform Act 2002 s 94(1)(b), (2)(b)). As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

7 Ibid Sch 2A para 20A(7) (as added: see note 3 supra). Any power of the Secretary of State to make such regulations is exercisable by statutory instrument: s 102. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 2A para 20A(8) (as so added). At the date at which this volume states the law no such regulations had been made.

8 Ibid Sch 2A para 20A(6) (as added (see note 3 supra); and amended by the Police Reform Act 2002 s 94(3)). As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82.

9 Ie under the Police Act 1996 Sch 2A para 3 (as added): see PARA 149 ante.

10 Ie under ibid Sch 2A para 5 (as added and amended): see PARA 150 ante. For the meaning of 'lay justice' see PARA 147 note 7 ante.

11 Ibid Sch 2A para 20A(5) (as added: see note 3 supra). See also note 3 supra.

## UPDATE

### 139-155 Police Authorities

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 372, 379, 380), 106 (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) apply to a police authority as they apply to a local authority; and s 105 (see LOCAL GOVERNMENT vol 69 (2009) PARA 286) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts

Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **147-155 Metropolitan Police Authority**

In respect of appointments of members of the Metropolitan Police Authority that take effect on or after 1 October 2008, see the Metropolitan Police Authority Regulations 2008, SI 2008/631 (amended by SI 2010/421).

### **148-154 Appointment of members by the Mayor of London ... Allowances for members**

These provisions now continue in force until 30 September 2008: see SI 2006/3364; and PARA 147 NOTE 2.

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### **155. Membership after 2 July 2008.**

The Secretary of State<sup>1</sup> must by regulations<sup>2</sup> make provision in relation to the membership of the Metropolitan Police Authority<sup>3</sup>. The regulations must provide for the Authority to consist of: (1) persons appointed from among<sup>4</sup> the Mayor of London<sup>5</sup> and members of the London Assembly<sup>6</sup>; and (2) other persons, including at least one lay justice<sup>7</sup>. The regulations must specify the number of members falling within heads (1) and (2) above<sup>8</sup>, and secure that the majority of members of the Authority are persons falling within head (1) above<sup>9</sup>. Those regulations may make further provision as to qualification for membership, and may provide for a specified number of the members of the Authority to be persons of a specified description<sup>10</sup>. Those regulations may include provision as to: (a) how a member is to be appointed<sup>11</sup>; (b) disqualification for membership<sup>12</sup>; (c) the tenure of office of a member (including the circumstances in which a member ceases to hold office or may be removed or suspended from office)<sup>13</sup>; (d) re-appointment as a member<sup>14</sup>; (e) the validity of acts and proceedings of a person appointed as a member in the event of his disqualification or lack of qualification<sup>15</sup>; (f) the validity of proceedings of the Authority in the event of a vacancy in membership or of a defect in the appointment of a member or in the composition of the Authority<sup>16</sup>; (g) the payment of remuneration and allowances to a member and the reimbursement of expenses<sup>17</sup>.

The Secretary of State must by regulations<sup>18</sup> provide that: (i) if the Mayor of London is a member of the Authority he is to be the chairman<sup>19</sup>, and, if not, the Mayor of London is to appoint a chairman from among the members of the Authority<sup>20</sup>; (ii) the Mayor of London may appoint one or more vice-chairmen from among the members of the Authority<sup>21</sup>.

The Secretary of State may by regulations make provision as to the payment of remuneration and allowances to, and the reimbursement of expenses of, members of the Authority's standards committee<sup>22</sup>.

Before making any regulations under the above provisions<sup>23</sup>, the Secretary of State must consult<sup>24</sup> the Metropolitan Police Authority<sup>25</sup>, the Association of Police Authorities<sup>26</sup>, the Greater London Authority<sup>27</sup>, persons<sup>28</sup> whom he considers to represent the interests of London boroughs<sup>29</sup>, and such other persons as he thinks fit<sup>30</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

2 Regulations under *ibid* Sch 2A (as added and substituted) may make transitional, consequential, incidental and supplemental provision or savings: s 5C(6), Sch 2A para 7(1) (s 5C added by the Greater London Authority Act 1999 s 310(1); Police Act 1996 s 5C(6) amended by the Police and Justice Act 2006 s 2, Sch 2 para 3; Police Act 1996 Sch 2A added by the Greater London Authority Act 1999 s 310(2), Sch 26; and substituted by the Police and Justice Act 2006 Sch 2 para 4). The power of the Secretary of State to make regulations is exercisable by statutory instrument: Police Act 1996 s 102. A statutory instrument containing regulations under Sch 2A (as added and substituted) is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 2A para 7(2) (as so added and substituted). At the date at which this volume states the law no such regulations had been made.

3 *Ibid* Sch 2A para 1(1) (as added and substituted: see note 2 *supra*). Although these provisions came into force on 15 January 2007, the previous provisions (see PARAS 147-154 ante) continue to have effect until 2 July 2008: see PARA 147 note 2 ante. As to the Metropolitan Police Authority see PARA 147 ante.

4 *Ibid* Sch 2A para 1(2)(a) (as added and substituted: see note 2 *supra*). The regulations must provide that the members falling within Sch 2A para 1(2)(a) (as added and substituted) are to be appointed by the Mayor of London: Sch 2A para 2 (as so added and substituted). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

5 *Ibid* Sch 2A para 1(3)(a) (as added and substituted: see note 2 *supra*).

6 *Ibid* Sch 2A para 1(3)(b) (as added and substituted: see note 2 *supra*). As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82.

7 *Ibid* Sch 2A para 1(2)(b) (as added and substituted: see note 2 *supra*). 'Lay justice' has the meaning given by the Courts Act 2003 s 9 (see MAGISTRATES); Police Act 1996 Sch 2A para 8 (as so added and substituted). The regulations must provide that one of the members falling within Sch 2A para 1(2)(b) (as added and substituted) is to be appointed by the Secretary of State, and the other members are to be appointed by the existing members of the Metropolitan Police Authority from among persons on a short-list prepared by a selection panel: Sch 2A para 3(1) (as so added and substituted). The regulations may make provision as to qualification for membership of a selection panel, and may provide for a specified number of the members of a panel to be persons of a specified description: Sch 2A para 3(2) (as so added and substituted). The regulations may include provision as to: (1) the number of members of a selection panel; (2) how and by whom a member of a panel is to be appointed; (3) disqualification for membership; (4) the tenure of office of a member of a panel (including the circumstances in which a member ceases to hold office or may be removed or suspended from office); (5) re-appointment as a member of a panel; (6) the conduct of proceedings of a panel, including any procedures that a panel is to follow; (7) the validity of acts and proceedings of a person appointed as a member of a panel in the event of his disqualification or lack of qualification; (8) the validity of proceedings of a panel in the event of a vacancy in membership or of a defect in the appointment of a member or in the composition of the panel; (9) the payment of remuneration and allowances to a member of a panel and the reimbursement of expenses: Sch 2A para 3(3)(a)-(i) (as so added and substituted).

8 *Ibid* Sch 2A para 1(4)(a) (as added and substituted: see note 2 *supra*).

9 *Ibid* Sch 2A para 1(4)(b) (as added and substituted: see note 2 *supra*).

10 *Ibid* Sch 2A para 1(5) (as added and substituted: see note 2 *supra*).

11 *Ibid* Sch 2A para 1(6)(a) (as added and substituted: see note 2 *supra*).

12 *Ibid* Sch 2A para 1(6)(b) (as added and substituted: see note 2 *supra*).

13 *Ibid* Sch 2A para 1(6)(c) (as added and substituted: see note 2 *supra*).

14 *Ibid* Sch 2A para 1(6)(d) (as added and substituted: see note 2 *supra*).

15 *Ibid* Sch 2A para 1(6)(e) (as added and substituted: see note 2 *supra*).

16 *Ibid* Sch 2A para 1(6)(f) (as added and substituted: see note 2 *supra*).

17 *Ibid* Sch 2A para 1(6)(g) (as added and substituted: see note 2 *supra*).

18 Such regulations may make further provision about how a chairman or vice-chairman is to be appointed, and provision as to: (1) qualification and disqualification for appointment; (2) the tenure of office of a chairman or vice-chairman (including the circumstances in which a chairman or vice-chairman ceases to hold office or

may be removed or suspended from office); (3) eligibility for re-appointment; (4) the validity of acts and proceedings of a person appointed as chairman or vice-chairman in the event of his disqualification or lack of qualification; (5) the validity of proceedings of the Authority in the event of a vacancy in the office of chairman or vice-chairman or of a defect in the appointment of a chairman or vice-chairman; (6) the payment of remuneration and allowances to a chairman or vice-chairman and the reimbursement of expenses: *ibid* Sch 2A para 4(3)(a)-(f) (as added and substituted: see note 2 *supra*). As to the making of regulations generally see note 2 *supra*.

19 *Ibid* Sch 2A para 4(1)(a) (as added and substituted: see note 2 *supra*).

20 *Ibid* Sch 2A para 4(1)(b) (as added and substituted: see note 2 *supra*).

21 *Ibid* Sch 2A para 4(2) (as added and substituted: see note 2 *supra*).

22 *Ibid* Sch 2A para 5 (as added and substituted: see note 2 *supra*). As to the making of regulations generally see note 2 *supra*. As to the standards committee see *PARA 147 ante*.

23 *Ie* under *ibid* Sch 2A (as added and substituted).

24 As to the exercise of the duty to consult see *JUDICIAL REVIEW* vol 61 (2010) *PARA 627*.

25 Police Act 1996 Sch 2A para 6(a) (as added and substituted: see note 2 *supra*).

26 *Ibid* Sch 2A para 6(b) (as added and substituted: see note 2 *supra*).

27 *Ibid* Sch 2A para 6(c) (as added and substituted: see note 2 *supra*). As to the Greater London Authority see *LONDON GOVERNMENT* vol 29(2) (Reissue) *PARAS 34, 79 et seq.*

28 For the meaning of 'person' see *PARA 110* note 6 *ante*.

29 Police Act 1996 Sch 2A para 6(d) (as added and substituted: see note 2 *supra*). As to London boroughs see *LONDON GOVERNMENT* vol 29(2) (Reissue) *PARA 30*.

30 *Ibid* Sch 2A para 6(e) (as added and substituted: see note 2 *supra*).

## **UPDATE**

### **139-155 Police Authorities**

Subject to the Local Government Act 1972 s 107(2)-(8), certain provisions relating to the arrangements for local authority committees and sub-committees under the Local Government Act 1972 ss 101-103 (see *LOCAL GOVERNMENT* vol 69 (2009) *PARAS 371, 372, 379, 380*), 106 (see *LOCAL GOVERNMENT* vol 69 (2009) *PARA 380*) apply to a police authority as they apply to a local authority; and s 105 (see *LOCAL GOVERNMENT* vol 69 (2009) *PARA 286*) applies both to a police authority and a committee of any such authority or authorities as it applies to a committee of a local authority or authorities; and in their application to the Common Council as police authority ss 101-106 have effect subject to s 107(2)-(8): see s 107(1) (amended by Police and Magistrates' Courts Act 1994 Sch 4 para 10(2), Sch 9 Pt I; and Greater London Authority Act 1999 Sch 27 para 27, Sch 34 Pt VII).

### **147-155 Metropolitan Police Authority**

In respect of appointments of members of the Metropolitan Police Authority that take effect on or after 1 October 2008, see the Metropolitan Police Authority Regulations 2008, SI 2008/631 (amended by SI 2010/421).

### **155 Membership after [30 September] 2008**

NOTE 3--Reference to 2 July 2008 is now to 30 September 2008: see SI 2006/3364; and  
 PARA 147 TEXT AND NOTES 2-4.

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## **(2) FUNCTIONS AND POWERS OF POLICE AUTHORITIES**

### **(i) Principal Functions of Police Authorities**

#### **A. GENERAL FUNCTIONS AND OBJECTIVES**

##### **156. General functions.**

Every police authority in England and Wales<sup>1</sup> and the Metropolitan Police Authority<sup>2</sup> must secure the maintenance of an efficient and effective police force<sup>3</sup> for its area<sup>4</sup>. However, it may not give directions to the chief officer or any other member of its force concerning the exercise of any power or discretion exercisable by a constable by virtue of his office<sup>5</sup>.

A police authority, in discharging its functions, must have regard to: (1) any strategic priorities determined by the Secretary of State<sup>6</sup>; (2) any objectives determined by the authority<sup>7</sup>; (3) any performance targets established by the authority<sup>8</sup>; and (4) any local policing plan issued by the authority<sup>9</sup>. Where the Secretary of State has issued a code of practice<sup>10</sup> which relates to a function of a police authority, the authority must have regard to the code in discharging that function<sup>11</sup>.

Every relevant council<sup>12</sup> must make arrangements (whether by standing orders or otherwise) for enabling questions on the discharge of the functions of a police authority<sup>13</sup> to be put by members of the council at a meeting of the council for answer by a person nominated by the authority for that purpose<sup>14</sup>. Likewise, the London Assembly<sup>15</sup> must make arrangements (whether by standing orders or otherwise) for enabling questions on the discharge of the functions of the Metropolitan Police Authority to be put by members of the Assembly at a meeting of the Assembly for answer by a person nominated by the authority for that purpose<sup>16</sup>.

1    le every police authority established under the Police Act 1996 s 3: see PARA 139 ante.

2    See *ibid* s 6(5) (added by the Greater London Authority Act 1999 s 311). In its application to the Metropolitan Police Authority, the Police Act 1996 s 6 (as amended) has effect as if the reference in s 6(1) to securing the maintenance of an efficient and effective police force for the metropolitan police district included a reference to securing that that force discharges its national or international functions efficiently and effectively: s 96B(1) (s 96B added by the Greater London Authority Act 1999 s 325, Sch 27 para 104). The Greater London Authority Act 1999 s 95(1), (3) (minimum budget for Metropolitan Police Authority: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 233) has effect as if the references to restoring or maintaining an efficient and effective police force for the metropolitan police district included references to securing that that force discharges its national or international functions efficiently and effectively: Police Act 1996 s 96B(6) (as so added). For the meaning of 'national or international functions' see PARA 205 post. As to the metropolitan police district see PARA 137 ante.

Subject to any provision made by or under any other enactment, in exercising its functions it is the duty of the Metropolitan Police Authority to have regard to the need: (1) to promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion (Greater London Authority Act 1999 s 404(1)(b), (2)(a), (3)); (2) to eliminate unlawful discrimination (s 404(1)(b), (2)(b), (3)); and (3) to promote good relations between persons of different racial groups, religious beliefs and sexual orientation (s 404(1)(b), (2)(c), (3)). For the meaning of 'enactment' see PARA 102 note 5 ante. As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

3 For the meaning of 'police force' see PARA 102 note 11 ante.

4 Police Act 1996 s 6(1). For the meaning of 'police area' see PARA 136 ante. Section 6(1) enables a police authority to do things which reasonably support the function which s 6(1) confers, although such a power is by no means open-ended and would not, for example, allow the authority to invade the provinces of the chief constable or the Secretary of State: *R v DPP, ex p Duckenfield*, *R v South Yorkshire Police Authority, ex p Chief Constable of South Yorkshire Police* [1999] 2 All ER 873, [2000] 1 WLR 55, QBD. A police authority is empowered by the Local Government Act 1973 s 111(1) (power to take action calculated to facilitate, or which is conducive or incidental to, the discharge of any of its functions: see LOCAL GOVERNMENT vol 69 (2009) PARA 462) to support its general function under the Police Act 1996 s 6(1) so as to fund officers' legal costs in criminal and judicial review proceedings: *R v DPP, ex p Duckenfield*, *R v South Yorkshire Police Authority, ex p Chief Constable of South Yorkshire Police* supra.

It is the duty of every police authority maintaining a police force to ensure that it is kept informed, in relation to that force, about all matters with respect to complaints and misconduct to which the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended) applies: see s 15(1), (2); and PARA 331 post. The provisions relating to the supply of goods and services by local authorities (see the Local Authorities (Goods and Services) Act 1970 s 1(1)-(3); and LOCAL GOVERNMENT vol 69 (2009) PARA 495) apply with amendments to police authorities: see the Police Act 1996 s 18 (substituted by the Police Reform Act 2002 s 101). As to the power of a police authority to enter into contracts see *R v Greater Manchester Police Authority, ex p Century Motors (Farnsworth) Ltd* (1996) Times, 31 May (contracting out of vehicle recovery scheme). A police authority has a duty to co-operate with local authorities in their duty to secure youth justice services for their areas (see the Crime and Disorder Act 1998 s 38); local authorities must consult with police authorities before formulating youth justice plans (see s 40); and police authorities have certain duties in relation to the Youth Justice Board (see s 41). As to youth justice generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1702 et seq; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 10 et seq.

5 *A-G for New South Wales v Perpetual Trustee Co Ltd* [1955] AC 457 at 478-480, 489, [1955] 1 All ER 846 at 851-852, 857, PC; *Fisher v Oldham Corp* [1930] All ER Rep 96 at 102 per McCardie J; *R v Metropolitan Police Comr, ex p Blackburn* [1968] 2 QB 118 at 135-136, [1968] 1 All ER 763 at 769, CA, per Lord Denning MR. See also PARA 178 post.

6 Police Act 1996 s 6(2)(a) (amended by the Police and Justice Act 2006 s 2, Sch 2 para 7(1), (3)(a)). As to the setting of strategic priorities by the Secretary of State see the Police Act 1996 s 37A (as added); and PARA 198 post. As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

7 Ibid s 6(2)(b). As to local policing objectives see s 7 (as amended); and PARA 161 post.

8 Ibid s 6(2)(c). This includes performance targets established in compliance with a direction under s 38 (see PARA 199 post) or otherwise: s 6(2)(c).

9 Ibid s 6(2)(d). As to local policing plans see s 8 (as amended); and PARA 162 post.

10 Ie under ibid s 39 (as amended): see PARA 200 post.

11 See ibid s 6(3).

12 For the meaning of 'relevant council' see PARA 140 note 7 ante: definition applied by ibid s 20(3).

13 Ie a police authority established under ibid s 3: see PARA 139 ante.

14 Ibid s 20(1) (amended by the Greater London Authority Act 1999 Sch 27 para 78). On being given reasonable notice by a relevant council of a meeting of that council at which questions on the discharge of the police authority's functions are to be put, the police authority must nominate one or more of its members to attend the meeting to answer those questions: s 20(2).

15 As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82 et seq.

16 Police Act 1996 s 20A(1) (s 20A added by the Greater London Authority Act 1999 Sch 27 para 78). On being given reasonable notice by the London Assembly of a meeting of the Assembly at which questions on the discharge of the Metropolitan Police Authority's functions are to be put, the Authority must nominate one or more of its members to attend the meeting to answer those questions: Police Act 1996 s 20A(2) (as so added).

## UPDATE

### 156 General functions

TEXT AND NOTES 1-4--Every such police authority must also hold the chief officer of police of the force to account for the exercise of his functions and those of persons under his direction and control: 1996 Act s 6(1) (amended by Police and Justice Act 2006 Sch 2 para 7(2)).

NOTE 4--Crime and Disorder Act 1998 s 38 amended: Criminal Justice and Immigration Act 2008 Sch 4 para 49.

TEXT AND NOTE 7--Now, head (2) any objectives determined by the authority by virtue of the 1996 Act s 6ZB (see PARA 159): s 6(2)(b) (amended by 2006 Act Sch 2 para 7(3)(b)).

TEXT AND NOTE 9--Now, head (4) any plan issued by the authority by virtue of the 1996 Act s 6ZB: s 6(2)(d) (substituted by 2006 Act Sch 2 para 7(3)(c)).

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### **157. Three year strategy plans.**

Until a day to be appointed the following provisions have effect<sup>1</sup>.

Every police authority<sup>2</sup> maintaining a police force<sup>3</sup> for a police area<sup>4</sup> in England and Wales<sup>5</sup> must, before the beginning of every relevant three year period<sup>6</sup>, issue a three year strategy plan which sets out the authority's medium and long term strategies for the policing of that area during that period<sup>7</sup>. Before a three year strategy plan for any period is issued by a police authority, a draft of a plan setting out medium and long term strategies for the policing of the authority's area during that period must have been prepared by the chief officer of police<sup>8</sup> of the police force maintained by that authority<sup>9</sup>, and submitted by him to the police authority for its consideration<sup>10</sup>. The Secretary of State<sup>11</sup> must issue guidance to police authorities and chief officers of police as to the matters to be contained in any three year strategy plan and as to the form to be taken by any such plan<sup>12</sup>; and he may from time to time revise and modify that guidance<sup>13</sup>. It is the duty of every police authority and chief officer of police to take account of any such guidance when issuing, preparing or modifying any such plan or any draft plan<sup>14</sup>.

A police authority which has issued a three year strategy plan for any period may modify that plan at any time during that period<sup>15</sup>. It is the duty, in issuing, preparing or modifying a three year strategy plan or a draft of such a plan, of every police authority or chief officer of police to have regard to the National Policing Plan in force at that time<sup>16</sup>. Before a police authority issues a three year strategy plan that differs in any material respect from the draft submitted to it by the chief officer of police of the force maintained by that authority<sup>17</sup>, or modifies its three year strategy plan<sup>18</sup>, it must consult with that chief officer<sup>19</sup>.

A police authority which is proposing to issue or modify any three year plan must submit that plan, or the modifications, to the Secretary of State<sup>20</sup>. Where a police authority issues a three year strategy plan or modifies such a plan, it must send a copy of the plan or the modified plan to the Secretary of State<sup>21</sup> and cause the plan or modified plan to be published<sup>22</sup>.

The Secretary of State may by regulations<sup>23</sup> make provision for the procedure to be followed on the submission to him of any plan or modifications<sup>24</sup>, and as to the periods which are to constitute relevant three year periods<sup>25</sup>.

Any best value performance plan prepared by a police authority<sup>26</sup> for any financial year must be consistent with any three year strategy plan which sets out the authority's current strategies for policing its area during any period which includes the whole or any part of that financial year<sup>27</sup>.

1 As from a day to be appointed the Police Act 1996 s 6A (as added) is repealed by the Police and Justice Act 2006 ss 2, 52, Sch 2 para 10, Sch 15 Pt 1(B). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'police authority' see PARA 139 note 1 ante.

3 For the meaning of 'police force' see PARA 102 note 11 ante.

4 For the meaning of 'police area' see PARA 136 ante.

5 For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante.

6 The relevant three year periods are the three year periods commencing on 1 April 2005, 1 April 2008 and every third year thereafter: Police Authorities (Three-year Strategy Plans) Regulations 2002, reg 2002/2526, reg 2. See the text and notes 23-25 infra.

7 Police Act 1996 s 6A(1) (s 6A added by the Police Reform Act 2002 s 92(1)). The local policing plan for any financial year must be consistent with the current three year strategy plan: see the Police Act 1996 s 8(2A) (as added); and PARA 162 post. A police authority's annual report must include an assessment of the extent to which a three year strategy plan has been implemented: see s 9(2) (as amended); and PARA 164 post.

8 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

9 Police Act 1996 s 6A(2)(a) (as added: see note 7 supra).

10 Ibid s 6A(2)(b) (as added: see note 7 supra). In preparing the draft plan, the chief officer of police of a police force must have regard to the views, obtained in accordance with arrangements under s 96 (see PARA 484 post) of people in the police area in question: s 6A(3) (as so added).

11 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

12 Ibid s 6A(6)(a) (as added: see note 7 supra).

13 Ibid s 6A(6)(b) (as added: see note 7 supra). Before issuing or revising any such guidance, the Secretary of State must consult with: (1) persons whom he considers to represent the interests of police authorities (s 6A(7)(a) (as so added)); (2) persons whom he considers to represent the interests of chief officers of police (s 6A(7)(b) (as so added)); and (3) such other persons as he thinks fit (s 6A(7)(c) (as so added)). For the meaning of 'person' see PARA 110 note 6 ante. As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

14 Ibid s 6A(6) (as added: see note 7 supra).

15 Ibid s 6A(4) (as added: see note 7 supra).

16 Ibid s 6A(5) (as added: see note 7 supra). If the Secretary of State considers that there are grounds for thinking that a police authority's three year strategy plan, or any proposals by a police authority for such a plan or for the modification of such a plan, may not be consistent with any National Policing Plan applicable to a financial year wholly or partly comprised in the period to which the strategy plan applies, he must, before informing the police authority of his conclusions on whether or not it is in fact so inconsistent, consult with the following persons (s 6A(10) (as so added)): (1) the police authority in question (s 6A(11)(a) (as so added)); (2) the chief officer of police of the police force maintained by that authority (s 6A(11)(b) (as so added)); (3) persons whom the Secretary of State considers to represent the interests of police authorities (s 6A(11)(c) (as so added)); and (4) persons whom the Secretary of State considers to represent the interests of chief officers of police (s 6A(11)(d) (as so added)).

17 Ibid s 6A(12)(a) (as added: see note 7 supra).

18 Ibid s 6A(12)(b) (as added: see note 7 supra).

19 Ibid s 6A(12) (as added: see note 7 supra).



20 Ibid s 6A(8) (as added: see note 7 supra).

21 Ibid s 6A(9)(a) (as added: see note 7 supra).

22 Ibid s 6A(9)(b) (as added: see note 7 supra). The copy of any modified plan sent to the Secretary of State and the publication of any modified plan must show the modifications, or be accompanied by or published with a document which sets them out or describes them: s 6A(9) (as so added).

23 The power of the Secretary of State to make such regulations is exercisable by statutory instrument: see ibid s 102. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 6A(15) (as added: see note 7 supra). As to the regulations that have been made see the Police Authorities (Three-year Strategy Plans) Regulations 2002, reg 2002/2526; and see note 6 supra.

24 Police Act 1996 s 6A(14)(a) (as added: see note 7 supra).

25 Ibid s 6A(14)(b) (as added: see note 7 supra). Such regulations may provide for a period of less than three years to be the first period treated as a relevant three year period: s 6A(14) (as so added). As to the three year period see note 6 supra.

26 See under the Local Government Act 1999 s 6: see LOCAL GOVERNMENT vol 69 (2009) PARA 706.

27 Police Act 1996 s 6A(13) (as added: see note 7 supra).

## UPDATE

### 157 Three year strategy plans

TEXT AND NOTE 1--Day now appointed: SI 2008/311.

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### 158. Power to confer particular functions on police authorities.

The Secretary of State<sup>1</sup> may by order<sup>2</sup> confer particular functions on police authorities<sup>3</sup>. Such an order may contain<sup>4</sup> provision requiring a police authority: (1) to monitor the performance of the police force<sup>5</sup> maintained for its area<sup>6</sup> in: (a) complying with any duty imposed on the force by or under the Police Act 1996, the Human Rights Act 1998 or any other enactment<sup>7</sup>; (b) carrying out any plan issued<sup>8</sup> by it<sup>9</sup>; (2) to secure that arrangements are made for that force to co-operate with other police forces whenever necessary or expedient<sup>10</sup>; (3) to promote diversity within that force and within the authority<sup>11</sup>. Before making an order, the Secretary of State must consult<sup>12</sup> the Association of Police Authorities<sup>13</sup>, the Association of Chief Police Officers<sup>14</sup>, and such other persons as he thinks fit<sup>15</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

2 Any such order may make different provision for different police authorities: Police Act 1996 s 6ZA(4) (s 6ZA added by the Police and Justice Act 2006 s 2, Sch 2 para 8). For the meaning of 'police authority' see PARA 139 note 1 ante. The power of the Secretary of State to make orders is exercisable by statutory instrument: Police Act 1996 s 102. A statutory instrument containing an order under s 6ZA (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 6ZA(5) (as so added). At the date at which this volume states the law no such order had been made.

- 3 Ibid s 6ZA(1) (as added: note 2 supra).
- 4 le without prejudice to the generality of ibid s 6ZA(1) (as added): see the text to notes 1-3 supra.
- 5 For the meaning of 'police force' see PARA 102 note 11 ante.
- 6 As to police areas see PARA 136 ante.
- 7 Police Act 1996 s 6ZA(2)(a)(i) (as added: note 2 supra). As to the Human Rights Act 1998 see CONSTITUTIONAL LAW AND HUMAN RIGHTS. For the meaning of 'enactment' see PARA 102 note 5 ante.
- 8 le by virtue of the Police Act 1996 s 6ZB (as added): see PARA 159 post.
- 9 Ibid s 6ZA(2)(a)(ii) (as added: note 2 supra).
- 10 Ibid s 6ZA(2)(b) (as added: note 2 supra).
- 11 Ibid s 6ZA(2)(c) (as added: note 2 supra).
- 12 As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.
- 13 Police Act 1996 s 6ZA(3)(a) (as added: note 2 supra).
- 14 Ibid s 6ZA(3)(b) (as added: note 2 supra). As to the Association of Chief Police Officers see PARA 423 post.
- 15 Ibid s 6ZA(3)(c) (as added: note 2 supra). For the meaning of 'person' see PARA 110 note 6 ante.

## UPDATE

### 158 Power to confer particular functions on police authorities

NOTES 7-11--See the Police Authorities (Particular Functions and Transitional Provisions) Order 2008, SI 2008/82 (amended by SI 2010/418).

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### 159. Policing plans.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

Before the beginning of each financial year every police authority<sup>2</sup> must issue a plan (known as a 'policing plan') setting out: (1) the authority's objectives (known as 'policing objectives') for the policing of its area<sup>3</sup> during that year<sup>4</sup>; and (2) the proposed arrangements for the policing of that area for the period of three years beginning with that year<sup>5</sup>.

Policing objectives must be so framed as to be consistent with any strategic priorities determined by the Secretary of State<sup>6</sup>. Before determining policing objectives, a police authority must consult the relevant chief officer of police<sup>7</sup>, and consider any views of the public obtained by the authority in accordance with arrangements made<sup>8</sup> by it<sup>9</sup>.

A draft of a policing plan required to be issued by a police authority under these provisions must be prepared by the relevant chief officer of police and submitted by him to the authority for it to consider<sup>10</sup>. The authority must consult the relevant chief officer of police before issuing a policing plan which differs from the draft submitted by him<sup>11</sup>.

The Secretary of State may by regulations<sup>12</sup> make supplementary provision<sup>13</sup>. The regulations may make further provision<sup>14</sup> as to persons who are to be consulted, and matters that are to be

considered, before determining policing objectives<sup>15</sup>. The regulations may also contain provision as to: (a) matters<sup>16</sup> to be dealt with in policing plans<sup>17</sup>; (b) persons who are to be consulted, and matters that are to be considered, in preparing policing plans<sup>18</sup>; (c) modification of policing plans<sup>19</sup>; (d) persons to whom copies of policing plans are to be sent<sup>20</sup>.

1 The Police Act 1996 s 6ZB is added by the Police and Justice Act 2006 s 2, Sch 2 para 9 as from a day to be appointed by order made by the Secretary of State: see s 53(1). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

2 For the meaning of 'police authority' see PARA 139 note 1 ante.

3 As to police areas see PARA 136 ante.

4 Police Act 1996 s 6ZB(1)(a) (as added: see note 1 supra).

5 Ibid s 6ZB(1)(b) (as added: see note 1 supra).

6 Ibid s 6ZB(2) (as added: see note 1 supra). As to strategic priorities see s 37A (as added); and PARA 198 post.

7 Ibid s 6ZB(3)(a) (as added: see note 1 supra). 'The relevant chief officer of police', in relation to a police authority, means the chief officer of police of the police force maintained by that authority: s 6ZB(11) (as so added). For the meaning of 'chief officer of police' see PARA 105 note 7 ante. For the meaning of 'police force' see PARA 102 note 11 ante.

8 Ie under ibid s 96 (as amended): see PARA 166 post.

9 Ibid s 6ZB(3)(b) (as added: see note 1 supra).

10 Ibid s 6ZB(4) (as added: see note 1 supra).

11 Ibid s 6ZB(4) (as added: see note 1 supra).

12 Before making such regulations, the Secretary of State must consult the Association of Police Authorities, the Association of Chief Police Officers, and such other persons as he thinks fit: ibid s 6ZB(8) (as added: see note 1 supra). The regulations may make different provision for different police authorities: s 6ZB(9) (as so added). The power of the Secretary of State to make regulations is exercisable by statutory instrument: s 102. A statutory instrument containing regulations under s 6ZB (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 6ZB(10) (as so added). For the meaning of 'person' see PARA 110 note 6 ante. As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627. As to the Association of Chief Police Officers see PARA 423 post.

13 See ibid s 6ZB(5) (as added: see note 1 supra).

14 Ie further to the provision made by ibid s 6ZB(3) (as added): see the text to notes 7-9 supra.

15 Ibid s 6ZB(6) (as added: see note 1 supra).

16 Ie in addition to those matters mentioned in ibid s 6ZB(1) (as added): see the text to notes 1-5 supra.

17 Ibid s 6ZB(7)(a) (as added: see note 1 supra).

18 Ibid s 6ZB(7)(b) (as added: see note 1 supra).

19 Ibid s 6ZB(7)(c) (as added: see note 1 supra).

20 Ibid s 6ZB(7)(d) (as added: see note 1 supra).

## UPDATE

### 159-160 Policing plans, Reports by police authorities

These provisions are now in force: SI 2008/311.

## 159 Policing plans

NOTE 12--See Policing Plan Regulations 2008, SI 2008/312 (amended by SI 2010/422).

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### 160. Reports by police authorities.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The Secretary of State may by order<sup>2</sup> require police authorities to issue reports concerning the policing of their areas<sup>3</sup>. An order may contain provision as to: (1) the periods to be covered by reports, and, as regards each period, the date by which reports are to be issued<sup>4</sup>; (2) the matters to be dealt with in reports<sup>5</sup>; (3) persons<sup>6</sup> to whom copies of reports are to be sent<sup>7</sup>. Before making an order, the Secretary of State must consult<sup>8</sup> the Association of Police Authorities<sup>9</sup>, the Association of Chief Police Officers<sup>10</sup>, and such other persons as he thinks fit<sup>11</sup>.

1 The Police Act 1996 s 6ZC is added by the Police and Justice Act 2006 s 2, Sch 2 para 9 as from a day to be appointed by order made by the Secretary of State: see s 53(1). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

2 Such an order may make different provision for different police authorities: *ibid* s 6ZC(4) (as added: see note 1 *supra*). The power of the Secretary of State to make orders is exercisable by statutory instrument: s 102. A statutory instrument containing an order under s 6ZC (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 6ZC(5) (as so added). For the meaning of 'police authority' see PARA 139 note 1 ante.

3 *Ibid* s 6ZC(1) (as added: see note 1 *supra*). As to police areas see PARA 136 ante.

4 *Ibid* s 6ZC(2)(a) (as added: see note 1 *supra*).

5 *Ibid* s 6ZC(2)(b) (as added: see note 1 *supra*).

6 For the meaning of 'person' see PARA 110 note 6 ante.

7 Police Act 1996 s 6ZC(2)(c) (as added: see note 1 *supra*).

8 As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

9 Police Act 1996 s 6ZC(3)(a) (as added: see note 1 *supra*).

10 *Ibid* s 6ZC(3)(b) (as added: see note 1 *supra*). As to the Association of Chief Police Officers see PARA 423 post.

11 *Ibid* s 6ZC(3)(c) (as added: see note 1 *supra*).

## UPDATE

### 159-160 Policing plans, Reports by police authorities

These provisions are now in force: SI 2008/311.

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### **161. Local policing objectives.**

Until a day to be appointed the following provisions have effect<sup>1</sup>.

Every police authority in England and Wales<sup>2</sup> and the Metropolitan Police Authority<sup>3</sup> must, before the beginning of each financial year, determine objectives for the policing of the authority's area<sup>4</sup> during that year<sup>5</sup>. The police authority's objectives may relate to matters to which the Secretary of State's objectives for police authorities<sup>6</sup> also relate or to other matters, but in any event must be so framed as to be consistent with those objectives<sup>7</sup>. Before determining its objectives, a police authority must consult the chief constable for its area<sup>8</sup>, and consider any views it has obtained<sup>9</sup> from the people in that area about matters concerning the policing of the area<sup>10</sup>.

1 As from a day to be appointed the Police Act 1996 s 7 is repealed by the Police and Justice Act 2006 ss 2, 52, Sch 2 para 10, Sch 15 Pt 1(B). At the date at which this volume states the law no such day had been appointed.

2 Ie every police authority established under the Police Act 1996 s 3: see PARA 139 ante.

3 See ibid s 7(4) (added by the Greater London Authority Act 1999 s 325, Sch 27 para 70). As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

4 As to police areas see PARA 136 ante.

5 Police Act 1996 s 7(1). In discharging its functions, every police authority is to have regard to such objectives: see s 6(2)(b); and PARA 156 ante. Particulars of any such objectives are to be given in the local policing plan: see s 8(2)(b) (as amended); and PARA 162 post. In its application to the Metropolitan Police Authority, s 7(1) has effect as if the reference to the policing of the metropolitan police district included a reference to the discharge by the metropolitan police force of its national or international functions: s 96B(2) (added by the Greater London Authority Act 1999 s 325, Sch 27 para 104). For the meaning of 'national or international functions' see PARA 205 post. As to the metropolitan police district see PARA 137 ante.

6 Ie objectives determined under the Police Act 1996 s 37 (repealed). As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

7 Ibid s 7(2).

8 Ibid s 7(3)(a). The Metropolitan Police Authority must consult the Metropolitan Police Commissioner in this regard: see s 7(4) (as added: see note 2 supra). As to chief constables and the Metropolitan Police Commissioner see PARA 178 et seq post.

9 Ie in accordance with arrangements made under ibid s 96 (as amended): see PARA 166 post.

10 Ibid s 7(3)(b).

### **UPDATE**

#### **161-162 Local policing objectives, Local policing plans**

Repeal of 1996 Act ss 7, 8 now in force: SI 2008/311.

### **161 Local policing objectives**

NOTE 5--1996 Act s 96B(2) amended: Police and Justice Act 2006 Sch 2 para 13(2).

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## **162. Local policing plans.**

Until a day to be appointed the following provisions have effect<sup>1</sup>.

Every police authority in England and Wales<sup>2</sup> and the Metropolitan Police Authority<sup>3</sup> must, before the beginning of each financial year, issue a local policing plan setting out its proposed arrangements for the policing of the authority's area<sup>4</sup> during the year<sup>5</sup>. The local policing plan must include a statement of the authority's priorities for the year, of the financial resources expected to be available and the proposed allocation of those resources<sup>6</sup>. The local policing plan must also give particulars of any objectives determined<sup>7</sup> by the Secretary of State<sup>8</sup>; any local policing objectives determined<sup>9</sup> by the authority<sup>10</sup>; any performance targets established<sup>11</sup> by the authority<sup>12</sup>; and any action proposed for the purpose of complying with the best value requirements<sup>13</sup>. The local policing plan for any financial year must be consistent with any three-year strategy plan<sup>14</sup> which sets out the authority's current strategies for the policing of its area during any period which includes the whole or any part of that financial year<sup>15</sup>.

The chief constable<sup>16</sup> for the area must prepare a draft of the local policing plan and submit it to the police authority for it to consider<sup>17</sup>. It is the duty of a police authority and of a chief constable, in preparing, issuing or submitting any local policing plan or draft plan, to have regard to any general guidance given by the Secretary of State with respect to local policing plans and the drafts of such plans<sup>18</sup>.

A police authority must arrange for every local policing plan issued by it to be published in such manner as appears to it to be appropriate and must send a copy of the plan to the Secretary of State<sup>19</sup>.

1 As from a day to be appointed the Police Act 1996 s 8 is repealed by the Police and Justice Act 2006 ss 2, 52, Sch 2 para 10, Sch 15 Pt 1(B). At the date at which this volume states the law no such day had been appointed.

2 In every police authority established under the Police Act 1996 s 3: see PARA 139 ante.

3 As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

4 As to police areas see PARA 136 ante.

5 Police Act 1996 s 8(1), (6) (s 8(6) added by the Greater London Authority Act 1999 s 325, Sch 27 para 71). In its application to the Metropolitan Police Authority, the Police Act 1996 s 8(1) has effect as if the reference to the policing of the metropolitan police district included a reference to the discharge by the metropolitan police force of its national or international functions: s 96B(3)(a) (s 96B added by the Greater London Authority Act 1999 Sch 27 para 104). For the meaning of 'national or international functions' see PARA 205 post. As to the metropolitan police district see PARA 137 ante.

In discharging its general functions, a police authority must have regard to any local policing plan: see the Police Act 1996 s 6(2)(d); and PARA 156 ante. In discharging his functions, every chief constable must have regard to the local policing plan issued by the police authority for his area (s 10(2)); and in discharging his functions, the Metropolitan Police Commissioner must have regard to the local policing plan issued by the Metropolitan Police Authority (s 9A(2) (s 9A added by the Greater London Authority Act 1999 s 314)). As to chief constables and the Metropolitan Police Commissioner see PARA 178 et seq post. A police authority's annual report must include an assessment of the extent to which the local policing plan has been carried out: see the Police Act 1996 s 9(2)(b) (as amended); and PARA 164 post. Every local policing plan must set out certain

information about community safety accreditation schemes: see the Police Reform Act 2002 s 40(7); and PARA 532 post.

6 Police Act 1996 s 8(2). A local policing summary must contain an assessment of the extent to which a police authority's priorities for the year have been met: see the Police Act 1996 (Local Policing Summaries) Order 2006, SI 2006/122, art 2(2)(b); and PARA 163 post.

7 Ie under the Police Act 1996 s 37 (repealed).

8 Ibid s 8(2)(a). As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

9 Ie under ibid s 7 (as amended): see PARA 161 ante.

10 Ibid s 8(2)(b) (amended by the Local Government Act 1999 s 24(1)(a), Sch 2 Table 1).

11 Ie whether in compliance with a direction under the Police Act 1996 s 38 (as amended) (see PARA 199 post) or otherwise: s 8(2)(c).

12 Ibid s 8(2)(c). In its application to the Metropolitan Police Authority, the Police Act 1996 s 8(2)(c) has effect as if the reference to any performance targets established by the authority excluded any standards of performance established by the Metropolitan Police Authority in pursuance of an agreement under s 96A(1) (as added) or a direction under s 96A(2) (as added) (see PARA 205 post): s 96B(3)(b) (as added: see note 5 supra).

13 Ibid s 8(2)(d) (added by the Local Government Act 1999 s 24(1)(b)). The best value requirements are those of the Local Government Act 1999 Pt I (ss 1-29) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 688 et seq): Police Act 1996 s 8(2)(d) (as so added).

14 Ie under ibid s 6A (as added): see PARA 157 ante.

15 Ibid s 8(2A) (added by the Police Reform Act 2002 s 92(2)).

16 In relation to the Metropolitan Police Authority, references in ibid s 8 (as amended) to the chief constable for the area are to be taken as references to the Metropolitan Police Commissioner: s 8(6) (as added: see note 5 supra).

17 Ibid s 8(3). Before issuing a local policing plan which differs from the draft submitted by the chief constable, a police authority must consult the chief constable: s 8(4). Every draft of a local policing plan, which is submitted by a chief officer of police to a police authority, must set out certain information about community safety accreditation schemes: see the Police Reform Act 2002 s 40(7); and PARA 532 post.

18 Police Act 1996 s 8(4A) (s 8(4A), (4B) added by the Police Reform Act 2002 s 107(1), Sch 7 para 14). Before giving any such guidance, the Secretary of State must consult with: (1) persons whom he considers to represent the interests of police authorities (Police Act 1996 s 8(4B)(a) (as so added)); (2) persons whom he considers to represent the interests of chief officers of police (s 8(4B)(b) (as so added)); and (3) such other persons as he thinks fit (s 8(4B)(c) (as so added)). For the meaning of 'person' see PARA 110 note 6 ante. For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

19 Ibid s 8(5).

## UPDATE

### 161-162 Local policing objectives, Local policing plans

Repeal of 1996 Act ss 7, 8 now in force: SI 2008/311.

### 162 Local policing plans

NOTE 5--1996 Act s 96B(3) repealed: Police and Justice Act 2006 Sch 2 para 13(3), Sch 15 Pt 1(B). 1996 Act s 10(2) amended: 2006 Act Sch 2 para 12. 1996 Act s 9A(2) amended: 2006 Act Sch 2 para 11.

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### **163. Local policing summaries.**

As soon as possible after the end of each financial year, every police authority in England and Wales<sup>1</sup> and the Metropolitan Police Authority<sup>2</sup> must issue a local policing summary<sup>3</sup>. A local policing summary is a report for members of the public in the authority's area<sup>4</sup> on matters relating to the policing of that area for the year<sup>5</sup>.

The Secretary of State<sup>6</sup> may by order<sup>7</sup> specify matters which are to be included in a local policing summary<sup>8</sup>. The matters which are to be included in a local policing summary are<sup>9</sup>: (1) a statement of the police authority's priorities for the year<sup>10</sup>; (2) an assessment of the extent to which the police force met the priorities set for the previous year<sup>11</sup>; and (3) an assessment of the extent to which the police force<sup>12</sup> has met the strategic policing priorities (if any) set by the Secretary of State<sup>13</sup>.

A police authority must arrange for every local policing summary issued by it to be published in such manner as appears to it to be appropriate<sup>14</sup>, and for a copy of every such summary to be sent, by whatever means appear to the authority to be appropriate, to each person liable to pay any tax, precept or levy to or in respect of the authority<sup>15</sup>. It is the duty of a police authority, in preparing and publishing a local policing summary, to have regard to any guidance given by the Secretary of State about the form and content of local policing summaries and the manner of their publication<sup>16</sup>.

1    le every police authority established under the Police Act 1996 s 3: see PARA 139 ante.

2    Ibid s 8A(7) (s 8A added by the Serious Organised Crime and Police Act 2005 s 157). As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

3    Police Act 1996 s 8A(1), (2) (as added: see note 2 supra).

4    As to police areas see PARA 136 ante.

5    Police Act 1996 s 8A(1), (2) (as added: see note 2 supra).

6    As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

7    Before making such an order the Secretary of State must consult: (1) the Association of Police Authorities (ibid s 8A(6)(a) (s 8A as added (see note 2 supra); and s 8A(6)(a), (b) substituted by the Police and Justice Act 2006 s 6(1), Sch 4 para 2)); (2) the Association of Chief Police Officers (Police Act 1996 s 8A(6)(b) (as so added and substituted)); and (3) such other persons as he thinks fit (s 8A(6)(c) (as so added)). 'The Association of Chief Police Officers' means the Association of Chief Police Officers of England, Wales and Northern Ireland: s 101 (definition added by the Police and Justice Act 2006 Sch 4 para 8). As to the Association of Chief Police Officers see PARA 423 post. For the meaning of 'person' see PARA 110 note 6 ante.

If it appears to the Secretary of State that, by reason of a change of name or otherwise, the interests of police authorities are represented by a body that is not called the Association of Police Authorities, or the interests of chief officers of police are represented by a body that is not called the Association of Chief Police Officers of England, Wales and Northern Ireland, he may by order make the appropriate consequential amendments to any statutory provision (including this provision) containing a reference to the association in question: Police and Justice Act 2006 s 6(2). 'Statutory provision' means provision contained in, or in any instrument made under, any Act: s 6(3). For the meaning of 'chief officer of police' see PARA 105 note 7 ante. As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

8    Ibid s 8A(3) (as added: see note 2 supra). Any power of the Secretary of State to make such an order is exercisable by statutory instrument: s 102. A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 8A(7) (as so added). As to the order that has been made see the Police Act 1996 (Local Policing Summaries) Order 2006, SI 2006/122; and the text to notes 9-13 infra.



- 9 Ibid art 2(1).
- 10 Ibid art 2(2)(a). As to local policing plans setting annual priorities see PARA 162 ante.
- 11 Ibid art 2(2)(b).
- 12 For the meaning of 'police force' see PARA 102 note 11 ante.
- 13 Police Act 1996 (Local Policing Summaries) Order 2006, SI 2006/122, art 2(2)(c). As to the setting of strategic policing priorities by the Secretary of State see the Police Act 1996 s 37A (as added); and PARA 198 post.
- 14 Police Act 1996 s 8A(4)(a) (as added: see note 2 supra).
- 15 Ibid s 8A(4)(b) (as added: see note 2 supra). As to the finances of police authorities see PARA 167 post.
- 16 Ibid s 8A(5) (as added: see note 2 supra). Before giving any such guidance, the Secretary of State must consult the same persons as he is required to consult in respect of the making of an order under s 8A(3) (as added) (see note 7 supra): see s 8A(6) (as so added).

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#### **164. Annual reports by police authorities.**

Until a day to be appointed the following provisions have effect<sup>1</sup>.

Every police authority in England and Wales<sup>2</sup> and the Metropolitan Police Authority<sup>3</sup> must, as soon as possible after the end of each financial year, issue a report relating to the policing of the authority's area<sup>4</sup> for the year<sup>5</sup>. A report issued by a police authority for any year must include an assessment of the extent to which, during that year, proposals have been implemented, and things have been done, in accordance with the three year strategy plan for the period that includes that year<sup>6</sup>, and the local policing plan issued for that year<sup>7</sup>.

A police authority must arrange for every annual report issued by it to be published in such manner as appears to it to be appropriate and must send a copy of the report to the Secretary of State<sup>8</sup>.

1 As from a day to be appointed the Police Act 1996 s 9 is repealed by the Police and Justice Act 2006 ss 2, 52, Sch 2 para 10, Sch 15 Pt 1(B). At the date at which this volume states the law no such day had been appointed.

2 Ie every police authority established under the Police Act 1996 s 3: see PARA 139 ante.

3 Ibid s 9(4) (added by the Greater London Authority Act 1999 s 325, Sch 27 para 72). As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

4 As to police areas see PARA 136 ante.

5 Police Act 1996 s 9(1). In its application to the Metropolitan Police Authority, s 9(1) has effect as if the reference to the policing of the metropolitan police district included a reference to the discharge by the metropolitan police force of its national or international functions: s 96B(4) (s 96B added by the Greater London Authority Act 1999 Sch 27 para 104). For the meaning of 'national or international functions' see PARA 205 post. As to the metropolitan police district see PARA 137 ante.

6 Police Act 1996 s 9(2)(a) (s 9(2) amended by the Police Reform Act 2002 s 92(3)). As to three year strategy plans see the Police Act 1996 s 6A (as added); and PARA 157 ante.

7 Ibid s 9(2)(b) (as amended: see note 6 supra). As to local policing plans see s 8 (as amended); and PARA 162 ante.

8 Ibid s 9(3). As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

## **UPDATE**

### **164 Annual reports by police authorities**

TEXT AND NOTE 1--Day now appointed (but duty to issue report for financial year ending 31 March 2008 not affected): SI 2008/311.

NOTE 5--1996 Act s 96B(4) amended: Police and Justice Act 2006 Sch 2 para 13(4).

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## ***B. APPOINTMENT OF CHIEF OFFICERS***

### **165. Appointment of chief officers.**

Every police authority responsible for maintaining a police force in England and Wales<sup>1</sup> must appoint a chief constable for that force and has powers to call upon him to retire or resign<sup>2</sup>. Every such authority must also appoint a deputy chief constable<sup>3</sup> and at least one assistant chief constable<sup>4</sup> for the force, and has similar powers in relation to their removal.

The Metropolitan Police Commissioner and the deputy commissioner are appointed by Her Majesty<sup>5</sup>. However, the Metropolitan Police Authority<sup>6</sup> has powers to call for the retirement or resignation of the Metropolitan Police Commissioner or the deputy commissioner<sup>7</sup>. The Metropolitan Police Authority must appoint an assistant commissioner, and has similar powers relating to his retirement or resignation<sup>8</sup>. The Metropolitan Police Authority may also appoint deputy assistant commissioners<sup>9</sup>.

1 I.e. a police force maintained under the Police Act 1996 s 2: see PARA 136 ante. As to police authorities see PARA 139 ante.

2 See ibid s 11 (as amended); and PARA 179 post.

3 See ibid s 11A (as added and amended); and PARA 180 post.

4 See ibid s 12 (as amended); and PARA 181 post.

5 See ibid ss 9B, 9D (both as added); and PARAS 183-184 post.

6 As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

7 See Police Act 1996 s 9E (as added and amended); and PARA 185 post.

8 See ibid s 9F (as added and amended); and PARA 186 post.

9 See ibid s 9FA (as added and amended); and PARA 186 post.

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### ***C. OBTAINING COMMUNITY VIEWS ON POLICING***

#### **166. Arrangements for obtaining the views of the community on policing.**

Arrangements must be made for each police area<sup>1</sup> for obtaining the views of the people in that area about matters concerning the policing of the area<sup>2</sup> and for obtaining their co-operation with the police in preventing crime in that area<sup>3</sup>. Arrangements for each police area must be made by the police authority<sup>4</sup> after consulting the chief constable<sup>5</sup> or, in the case of the metropolitan police district<sup>6</sup>, the Metropolitan Police Commissioner<sup>7</sup> as to the arrangements that would be appropriate<sup>8</sup>. In relation to arrangements for the City of London police area<sup>9</sup>, the Common Council of the City of London<sup>10</sup> must issue guidance to the City of London Police Commissioner<sup>11</sup>; and the Commissioner must make such arrangements after taking account of that guidance<sup>12</sup>. The arrangements made must be reviewed from time to time by the body or person whose duty it is to make them<sup>13</sup>.

If it appears to the Secretary of State<sup>14</sup> that the arrangements for a police area are inadequate, he may require the body or person whose duty it is to make arrangements for that area to submit a report to him concerning the arrangements<sup>15</sup>. After considering such a report the Secretary of State may require the body or person who submitted it to review the arrangements and submit a further report to him concerning them<sup>16</sup>.

Police authorities and chief officers of police also have a role in the formulation and implementation of crime and disorder strategies, which involves some public consultation<sup>17</sup>.

1 For the meaning of 'police area' see PARA 136 ante.

2 Police Act 1996 s 96(1)(a). Before determining local policing objectives, a police authority must consider any views obtained by the authority in accordance with arrangements under s 96 (as amended): see s 7(3)(b); and PARA 161 ante. In preparing the draft plan in connection with the formulation of a three year strategy plan, a chief officer of police must have regard to the views of people in the police area in question obtained in accordance with arrangements under s 96 (as amended): see s 6A(3) (as added); and PARA 157 ante.

3 Ibid s 96(1)(b).

4 For the meaning of 'police authority' see PARA 139 note 1 ante.

5 As to the appointment etc of chief constables see PARA 179 post.

6 As to the metropolitan police district see PARA 137 ante.

7 As to the Metropolitan Police Commissioner see PARA 183 post.

8 Police Act 1996 s 96(2) (amended by the Greater London Authority Act 1999 s 325, Sch 27 para 103(1), (2) (a), (b)).

9 For the meaning of 'City of London police area' see PARA 138 note 1 ante.

10 As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

11 As to the City of London Police Commissioner see PARA 187 post.

12 Police Act 1996 s 96(6).

13 See ibid s 96(7). A body or person whose duty it is to make arrangements is under the same duties to consult when reviewing arrangements as when making them: s 96(10).

14 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

15 See *ibid* s 96(8).

16 *Ibid* s 96(9).

17 *Ie* under the Crime and Disorder Act 1998 ss 5, 6 (both as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 855.

## UPDATE

### 166 Arrangements for obtaining the views of the community on policing

TEXT AND NOTES--See the Police Authority (Community Engagement and Membership) Regulations 2010, SI 2010/421.

TEXT AND NOTE 3--Refers now to crime and anti-social behaviour: Police Act 1996 s 96(1) (b) (amended by the Police and Justice Act 2006 s 30(1), (2)).

TEXT AND NOTES 4-8--Police Act 1996 s 96(2) further amended: Police and Justice Act 2006 s 30(1), (3).

TEXT AND NOTES 9-16--Police Act 1996 s 96(6)-(10) substituted: Police and Justice Act 2006 s 30(1), (4).

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## **D. FINANCE**

### **167. Financial functions.**

Every police authority in England and Wales<sup>1</sup> and the Metropolitan Police Authority<sup>2</sup> must keep a police fund<sup>3</sup>. All receipts or expenditure of the police authority must be paid into or out of the police fund unless there is a different requirement in regulations made under the Police Pensions Act 1976<sup>4</sup>. Each such police authority must keep accounts of payments made into or out of the police fund<sup>5</sup>.

Police authorities in England and Wales<sup>6</sup> are financed partly by precept but such an authority must not issue a precept under the Local Government Finance Act 1992<sup>7</sup> or make calculations as to its budget requirements<sup>8</sup> unless the members of the authority approving the decision as to the budget requirements constitute at least half of the total membership at the time of the decision<sup>9</sup>, and include more than half of the members (at that time) who are members of a relevant council<sup>10</sup>. The budget for the Metropolitan Police Authority is calculated by the Greater London Authority<sup>11</sup>.

The expenses of the City of London police force are met out of the City of London police fund<sup>12</sup>. Any expenditure incurred in respect of any special constables appointed for the City of London police area<sup>13</sup>, and any police cadets appointed in relation to the City of London police force<sup>14</sup>, is paid out of the City of London police fund<sup>15</sup>.

1 *Ie* every police authority established under the Police Act 1996 s 3: see PARA 139 ante.

2 Ibid s 14(4) (added by the Greater London Authority Act 1999 s 325, Sch 27 para 73). As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

3 See the Police Act 1996 s 14(1). 'Police fund' means: (1) in relation to a force maintained under s 2 (see PARA 136 ante) or the metropolitan police force (see PARA 137 ante), the fund kept by that force's police authority under s 14 (as amended); and (2) in relation to the City of London police force (see PARA 138 ante), the fund out of which the expenses of that force are paid: s 101(1) (definition amended by the Greater London Authority Act 1999 ss 312(1), (3)(a), (b), 423, Sch 34 Pt VII). This definition is applied to any other Act, unless the contrary intention appears: see the Interpretation Act 1978 s 5, Sch 1 (amended by the Police Act 1996 s 103, Sch 7 para 32). As to grants and financing see PARAS 217-221 post. As to the payment from the police fund of awards of damages or costs resulting from the unlawful conduct of constables see the Police Act 1996 s 88 (as amended); and PARA 105 ante.

4 See ibid s 14(2). As to police pensions see PARA 407 et seq post.

5 Ibid s 14(3). The accounts of a police authority established under s 3 (see PARA 139 ante) must be audited by an auditor or auditors appointed by the Audit Commission: see the Audit Commission Act 1998 s 2, Sch 2 para 1(k); and LOCAL GOVERNMENT vol 69 (2009) PARA 757 et seq.

6 Ie police authorities established under the Police Act 1996 s 3: see PARA 139 ante.

7 Ie under the Local Government Finance Act 1992 s 40 (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 524): Police Act 1996 s 19(1)(a).

8 Ie the calculation required by the Local Government Finance Act 1992 s 43 (as amended) (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 525): Police Act 1996 s 19(1)(b).

9 Ibid s 19(2)(a). As to the membership of police authorities see PARA 140 ante.

10 Ibid s 19(2)(b) (amended by the Police and Justice Act 2006 s 2, Sch 2 para 5). For the meaning of 'relevant council' see PARAS 140 note 7, 146 note 5 ante.

11 See LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 232-233.

12 See the Police Act 1996 s 101(1). As to the City of London police force see PARA 138 ante.

13 Ibid s 95(a) (s 95 amended by the Greater London Authority Act 1999 Sch 27 para 102(1), (2), Sch 34 Pt VII). For the meaning of 'City of London police area' see PARA 138 note 1 ante. As to special constables see PARAS 108-112 ante.

14 Police Act 1996 s 95(b) (as amended: see note 13 supra). As to police cadets see PARAS 113-118 ante.

15 Ibid s 95 (as amended: see note 13 supra).

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## ***E. CIVILIAN STAFF***

### **168. Functions in relation to civilian staff.**

A police authority in England and Wales<sup>1</sup> and the Metropolitan Police Authority<sup>2</sup> may employ civilians to assist the police force<sup>3</sup> maintained by it, or otherwise to enable the authority to discharge its functions<sup>4</sup>. A police authority must exercise its powers<sup>5</sup> relating to the discharge of its functions so as to secure that<sup>6</sup> any person employed by the authority solely to assist the police force maintained by the authority is under the direction and control of the chief officer of police of that force<sup>7</sup>.

Where a police authority in England and Wales or the Metropolitan Police Authority<sup>8</sup> is required or authorised by any Act to appoint a person to a specified office under the authority<sup>9</sup> or to

designate a person as having specified duties or responsibilities<sup>10</sup>, then, notwithstanding any provision of that Act to the contrary, it may appoint either a civilian employed by the authority<sup>11</sup> or a person not holding any office or employment under the authority<sup>12</sup>.

Civilians employed by a police authority in England and Wales are eligible to membership of the local government pension scheme<sup>13</sup>. The Metropolitan Police Authority has power to grant pensions or other benefits to or in respect of persons who are employed by it<sup>14</sup>. Pensions payable to civilians employed<sup>15</sup> to assist a police force are 'official pensions' for the purposes of the Pensions (Increase) Act 1971<sup>16</sup> and, subject to the terms of that Act, therefore qualify for increases under that Act<sup>17</sup>.

A police authority in England and Wales and the Metropolitan Police Authority may insure voluntary assistants against personal accident, disease or sickness, whether fatal or not<sup>18</sup>.

Police authority staff are subject to the Official Secrets Act 1911<sup>19</sup>.

A police authority in England and Wales and the Metropolitan Police Authority must appoint a person to be the chief executive of the authority<sup>20</sup>.

1    Ie a police authority established under the Police Act 1996 s 3: see PARA 139 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.

2    Ibid s 15(5) (added by the Greater London Authority Act 1999 s 325, Sch 27 para 74(1), (4)). As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

3    For the meaning of 'police force' see PARA 102 note 11 ante.

4    Police Act 1996 s 15(1).

5    Ie under the Local Government Act 1972 ss 101, 107 (both as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 370.

6    Ie subject to the Police Act 1996 s 24(3A) (as added): see PARA 231 post.

7    See ibid s 15(2) (substituted by the Police and Justice Act 2006 s 2, Sch 2 para 16(1), (2)). The powers of direction and control include the powers of engagement and dismissal: Police Act 1996 s 15(4). For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

8    Ibid s 17(2) (added by the Greater London Authority Act 1999 Sch 27 para 76(1), (3)).

9    Police Act 1996 s 17(1)(a) (s 17(1) renumbered by the Greater London Authority Act 1999 Sch 27 para 76(1), (2)).

10   Police Act 1996 s 17(1)(b) (as renumbered: see note 9 supra).

11   Ie employed under ibid s 15 (as amended): see the text to notes 1-7 supra.

12   Ibid s 17(1)(b) (as renumbered: see note 9 supra).

13   See the Local Government Pension Scheme Regulations 1997, SI 1997/1612, reg 4(1)-(3), Sch 2 (as amended). A civilian employed by the Metropolitan Police Authority may also be so eligible: see reg 4.

14   See the Superannuation (Miscellaneous Provisions) Act 1967 s 15(1), (2) (s 15(1) amended, and s 15(2) substituted, by the Greater London Authority Act 1999 Sch 27 para 20). See also the Warrant Enforcement Staff Pensions Order 2002, SI 2002/1043; and the Metropolitan Police Authority (Civil Staff Pensions) Order 2002, SI 2002/2468.

15   Ie under the Police Act 1996 s 15 (as amended): see the text to notes 1-7 supra.

16   See the Pensions (Increase) Act 1971 s 5(1), Sch 2 para 51(a).

17   As to the increase of official pensions under the Pensions (Increase) Act 1971 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 615-616.

18 See the Local Government Act 1972 ss 140A, 146A (s 140A added by the Local Government (Miscellaneous Provisions) Act 1982 s 39(2); Local Government Act 1972 s 146A added by the Local Government Act 1985 s 84, Sch 14 para 16). See also LOCAL GOVERNMENT vol 69 (2009) PARA 224. 'Voluntary assistant' means a person who, at the request of a member of the police force maintained by the police authority, performs any service or does anything otherwise than for payment by the authority (except by way of reimbursement of expenses) for the purposes of, or in connection with, the carrying out of any of the functions of the authority: Local Government Act 1972 ss 140A(2), 146A(1B) (ss 140A, 146A as so added; s 146A(1B), (1C) added by the Local Government Act 1985 s 84, Sch 14 para 16; and amended by the Police (Insurance of Voluntary Assistants) Act 1997 s 1). For these purposes, a special constable acting as such is not to be treated as a voluntary assistant: Local Government Act 1972 s 146A(1C) (as so added and amended). As to special constables see PARA 108 et seq ante.

19 See *Loat v Andrews* [1986] ICR 679, CA. As to offences in respect of official secrets see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 478 et seq.

20 See the Police Act 1996 s 16(1), (2) (s 16(1) renumbered, and s 16(2) added, by the Greater London Authority Act 1999 Sch 27 para 75; Police Act 1996 s 16(1), (2) amended by the Police and Justice Act 2006 Sch 2 para 18(1), (2)). A reference in subordinate legislation to the clerk to a police authority has effect as a reference to the chief executive of the authority: Police and Justice Act 2006 Sch 2 para 20(1). A person holding office as clerk to a police authority on 1 April 2007 (ie the commencement of Sch 2 para 18) continues in that office as chief executive of the authority: Sch 2 para 20(3). 'Subordinate legislation' means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act; and 'Act' includes a local and personal or private Act: Interpretation Act 1978 s 21(1).

## UPDATE

### 168 Functions in relation to civilian staff

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 13--SI 1997/1612 reg 4(1)-(3), Sch 2 revoked: SI 2008/238. See now Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166; Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239; and LOCAL GOVERNMENT vol 69 (2009) PARA 448 et seq.

NOTE 18--1972 Act s 146A further amended: LOCAL GOVERNMENT vol 69 (2009) PARA 462.

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## F. TRAFFIC WARDENS

### 169. Functions relating to traffic wardens.

A police authority<sup>1</sup> may appoint traffic wardens to discharge, in aid of the police, functions normally undertaken by the police in connection with the control and regulation of, or the enforcement of the law relating to, traffic (including pedestrians) or stationary vehicles<sup>2</sup>. Persons so appointed are under the direction of the chief officer of police<sup>3</sup> but are deemed to be employed by the police authority<sup>4</sup>.

The main functions of traffic wardens relate to parked cars, parking places and traffic control<sup>5</sup>, and they may be employed as school crossing patrols or parking attendants<sup>6</sup>. For the purposes of the exercise of their functions, traffic wardens enjoy certain police powers<sup>7</sup>.

The expenses incurred for the purposes of or in connection with traffic wardens are defrayed as if those expenses were expenses incurred for the purposes of the police force<sup>8</sup> concerned<sup>9</sup>. Any power to acquire, or authorise the acquisition of, land for the purposes of a police force includes power to do so for purposes connected with traffic wardens; and any land occupied for those purposes is deemed to be occupied for the purposes of the police force<sup>10</sup>.

1 For the meaning of 'police authority' see PARA 139 note 1 ante.

2 Road Traffic Regulation Act 1984 s 95(1), (3). Traffic wardens must not be employed to discharge functions other than those prescribed as appropriate for the purpose by order of the Secretary of State made by statutory instrument, and no such order may be made unless a draft of the order has been laid before and approved by the resolution of each House of Parliament: s 95(5). The Functions of Traffic Wardens Order 1970, SI 1970/1958 (as amended) has effect as if made under this provision (see the text and note 5 infra). As to the Secretary of State see PARA 107 note 15 ante. In so far as the police authority determines, but not otherwise, the local government superannuation arrangements apply to traffic wardens: see the Road Traffic Regulation Act 1984 s 97(1) (amended by the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 48(1), (2), Sch 34 Pt VII). As to the local government superannuation scheme see LOCAL GOVERNMENT vol 69 (2009) PARA 448 et seq.

3 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

4 Road Traffic Regulation Act 1984 s 95(1).

5 See the Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(1), Schedule (amended by SI 1986/1328, SI 1993/1334, SI 2002/2975).

6 See the Road Traffic Regulation Act 1984 s 95(4); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 868. As to school crossing patrol functions of police authorities see PARA 170 post.

7 See *ibid* s 96 (as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 868.

8 For the meaning of 'police force' see PARA 102 note 11 ante.

9 See the Road Traffic Regulation Act 1984 s 97(3); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 868. As to the payment of the expenses of police forces see PARA 167 ante.

10 See *ibid* s 97(5); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 868.

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## ***G. SCHOOL CROSSING PATROLS***

### **170. Functions relating to school crossing patrols.**

Arrangements may be made by the appropriate authority<sup>1</sup> for the patrolling of places where children cross roads on their way to or from school, or from one part of a school to another, at such times as the authority thinks fit<sup>2</sup>, by persons appointed by or on behalf of the appropriate authority, other than constables<sup>3</sup>. In taking decisions as to making such arrangements, a county council or metropolitan district council must have regard to any representations made to it by local authorities for localities in the county or metropolitan district<sup>4</sup>. Before making such arrangements for the patrolling of places where children cross GLA roads<sup>5</sup>, a London borough



council or the Common Council of the City of London must consult Transport for London and take account of any representations made by it<sup>6</sup>.

The appropriate authority must satisfy itself of the adequate qualifications of persons appointed to patrol, and provide requisite training of persons to be appointed<sup>7</sup>.

Any arrangements made by a county council, a metropolitan district council or a London borough council may include an agreement between that council and the police authority<sup>8</sup> for the police area<sup>9</sup> in which those places are, for the performance by the police authority on such terms as may be specified in the agreement of such functions for the purposes of the arrangements as may be so specified<sup>10</sup>.

A school crossing patrol has powers to stop vehicles at places where persons are seeking to cross the road<sup>11</sup>.

1 The appropriate authority is: (1) as respects places outside Greater London, the county council or the metropolitan district council for the places in question; (2) as respects places in the City of London, the Common Council of the City; and (3) as respects places in a London borough, the council for the borough: Road Traffic Regulation Act 1984 s 26(2) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(10)(a); and the Greater London Authority Act 1999 s 288(1), (2)(a), (b)). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55; and as to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq.

2 Road Traffic Regulation Act 1984 s 26(1A) (added by the Transport Act 2000 s 270(1), (2)(b)).

3 Road Traffic Regulation Act 1984 s 26(1) (amended by Transport Act 2000 ss 270(1), (2)(a), 274, Sch 31 Pt V(2)). As to the office of constable see PARA 101 et seq ante.

4 Road Traffic Regulation Act 1984 s 26(4) (amended by the Local Government Act 1985 Sch 5 para 4(10)(b); and the Greater London Authority Act 1999 s 288(1), (3)(a), (b), Sch 34 Pt VI).

5 As to GLA roads see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 822.

6 Road Traffic Regulation Act 1984 s 26(4A) (added by the Greater London Authority Act 1999 s 288(1), (4)). As to Transport for London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 269-321.

7 Road Traffic Regulation Act 1984 s 26(3).

8 For the meaning of 'police authority' see PARA 139 note 1 ante.

9 For the meaning of 'police area' see PARA 136 note 2 ante.

10 Road Traffic Regulation Act 1984 s 26(5) (amended by the Local Government Act 1985 Sch 5 para 4(10)(c); and the Greater London Authority Act 1999 s 288(1), (5)).

11 See the Road Traffic Regulation Act 1984 s 28 (as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 781.

## UPDATE

### 170-171 Functions relating to school crossing patrols, Street collections

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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## **H. STREET COLLECTIONS**

### **171. Street collections.**

Certain authorities<sup>1</sup> may make regulations<sup>2</sup> with respect to the places where and the conditions under which persons may be permitted in any street or public place within their areas to collect money or sell articles for the benefit of charitable or other purposes<sup>3</sup>.

1 The Common Council of the City of London, the police authority for the metropolitan police district (ie the Metropolitan Police Authority: see PARA 147 ante) and the council of each district: Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5(1A) (added by the Local Government Act 1972 s 251, Sch 29 para 22). However, any regulations made by a district council do not affect any part of its area which also falls within the area covered by the metropolitan police district: see the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5(1A) (as so added). As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55. As to the metropolitan police district see PARA 137 ante. As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

As from a day to be appointed the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5 (as amended) is repealed: see the Charities Act 1992 ss 78(2), 79(7), Sch 7. At the date at which this volume states the law no such day had been appointed.

2 Regulations made under this provision do not come into operation until they have been confirmed by the Secretary of State (Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5(1) proviso (a)), and do not apply to the selling of articles in any street or public place when the articles are sold in the ordinary course of trade and for the purpose of earning a livelihood, and no representation is made by or on behalf of the seller that any part of the proceeds of sale are to be devoted to any charitable purposes (s 5(1) proviso (b)). See note 1 supra. 'Street' includes any highway and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not: s 5(4). As to charitable purposes see CHARITIES vol 8 (2010) PARA 1 et seq. As to regulations under this provision see the Street Collections (Metropolitan Police District) Regulations 1979, SI 1979/1230 (amended by SI 1986/1696). Other regulations made under this provision are local in nature and are not recorded in this work.

3 Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5(1) (amended by the Local Government Act 1972 Sch 29 para 22). See note 1 supra. A person who acts in contravention of the regulations made under this provision is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46. As to the standard scale see PARA 127 note 2 ante.

As from a day to be appointed the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5(1) (as amended) is further amended so as to refer to collecting or selling for 'any purposes in circumstances not involving the making of a charitable appeal' instead of for 'the benefit of charitable or other purposes': s 5(1) (as so amended; and prospectively further amended by the Charities Act 2006 s 75(1), Sch 8 para 15(1), (2)). At the date at which this volume states the law no such day had been appointed. See note 1 supra.

## **UPDATE**

### **170-171 Functions relating to school crossing patrols, Street collections**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **171 Street collections**

NOTE 2--Or confirmed by the Minister for the Cabinet Office: 1916 Act s 5 proviso (a) (amended by SI 2006/2951).

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## ***I. INTERNATIONAL ASSISTANCE***

### **172. Provision of advice and assistance to international organisations etc.**

Subject to the consent of the Secretary of State<sup>1</sup> or a general authorisation given by him<sup>2</sup>, a police authority<sup>3</sup> may provide advice and assistance: (1) to an international organisation or institution<sup>4</sup>; or (2) to any other person<sup>5</sup> or body which is engaged outside the United Kingdom<sup>6</sup> in the carrying on of activities similar to any carried on by the authority or the chief officer of police<sup>7</sup> for its area<sup>8</sup>. This power includes a power to make arrangements under which a member of the police force<sup>9</sup> maintained by the authority is engaged for a period of temporary service with a person or body within head (1) or head (2) above<sup>10</sup>. A police authority may make charges for any such advice or assistance<sup>11</sup>.

A police authority is not authorised, under this power, to provide any financial assistance by making a grant or loan<sup>12</sup>, giving a guarantee or indemnity<sup>13</sup>, or investing by acquiring share or loan capital<sup>14</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

2 See *ibid* s 26(1), (3). A consent or authorisation may be given subject to such conditions as appear to the Secretary of State to be appropriate: s 26(4). Section 26 is without prejudice to the Police (Overseas Services) Act 1945 (see PARA 427 post): Police Act 1996 s 26(8) (amended by the International Development Act 2002 s 19(2), Sch 4).

3 For the meaning of 'police authority' see PARA 139 note 1 ante.

4 Police Act 1996 s 26(1)(a).

5 For the meaning of 'person' see PARA 110 note 6 ante.

6 For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

7 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

8 Police Act 1996 s 26(1)(b). For the meaning of 'police area' see PARA 136 ante.

9 For the meaning of 'police force' see PARA 102 note 11 ante.

10 Police Act 1996 s 26(2).

11 *Ibid* s 26(6).

12 *Ibid* s 26(5)(a).

13 *Ibid* s 26(5)(b).

14 *Ibid* s 26(5)(c).

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## **(ii) Functions in respect of Riot Damage**

### **173. Compensation for damage by riot.**

There is statutory provision for the compensation of persons<sup>1</sup> who sustain loss as a result of property being injured, stolen or destroyed by riotous persons<sup>2</sup>. The compensation authority in relation to any police area<sup>3</sup> is the police authority<sup>4</sup>. Compensation is payable out of the police fund<sup>5</sup> for the police area in which the property is situated<sup>6</sup>.

1 'Person' includes a body of persons, corporate or unincorporate: Riot (Damages) Act 1886 s 9.

2 See *ibid* s 2(1) (amended by the Police Act 1964 s 63, Sch 9; and the Police Act 1996 s 103(1), Sch 7 para 9). See further PARA 174 *et seq* post. As to the meaning of 'riotous' and 'riotously' see PARA 174 note 2 post.

3 For the meaning of 'police area' see PARA 136 ante.

4 Riot (Damages) Act 1886 s 9 (definition amended by the Police and Magistrates' Courts Act 1994 s 93, Sch 9 Pt I; the Police Act 1996 Sch 7 para 11(c); and the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 6(1), (2), Sch 34 Pt VII). For the meaning of 'police authority' see PARA 139 note 1 ante.

5 For the meaning of 'police fund' see PARA 167 note 3 post.

6 See the Riot (Damages) Act 1886 s 5(1) (amended by the Police Act 1964 s 64, Sch 9, Sch 10 Pt I). Where property at sea is involved, compensation is paid out of the police fund for the nearest police area: see the Merchant Shipping Act 1995 s 235; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 996. As to the application of these provisions to aircraft see the Aircraft (Wreck and Salvage) Order 1938 SR & O, 1938/136, art 2 (as amended); and AIR LAW vol 2 (2008) PARA 599.

## **UPDATE**

### **173 Compensation for damage by riot**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--Operators of an immigration detention centre with public law responsibilities in respect of order and security at the centre are 'persons' within the meaning of the 1886 Act: *Yarl's Wood Immigration Ltd v Bedfordshire Police Authority* [2009] EWCA Civ 1110, [2009] All ER (D) 246 (Oct).

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### **174. Circumstances giving rise to compensation.**

Compensation is payable to a person<sup>1</sup> suffering loss by riot damage<sup>2</sup> where a house, shop or building<sup>3</sup> has been injured or destroyed or property in it has been injured, stolen or destroyed,

or certain machinery, engines or erections used in agriculture, manufacturing or quarrying<sup>4</sup> have been injured or destroyed by persons riotously and tumultuously assembled together<sup>5</sup>.

For there to be a riot, at least three persons must be involved and they must have a common purpose; the execution or inception of that purpose must be proved; there must be proof of an intent on the part of the persons involved to help one another, by force if necessary, against any persons opposing the execution of their common purpose; and the use of force or violence in connection with the common purpose must be proved and it must be such as to alarm at least one person of reasonable firmness and courage<sup>6</sup>, although direct evidence of this is possibly unnecessary<sup>7</sup>. Compensation is only payable where the persons involved are not only riotously but also tumultuously assembled, so these are cumulative requirements<sup>8</sup>.

1 For the meaning of 'person' see PARA 173 note 1 ante. Where a church or chapel is injured or destroyed or any property in it has been injured, stolen or destroyed, the claim may be made by the churchwardens, chapelwardens or, if none, the persons having its management or in whom the legal estate is vested: see the Riot (Damages) Act 1886 s 7(a). Where a school, hospital, public institution or public building is injured or destroyed or any property in it has been injured, stolen or destroyed, the claim may be made by the persons having control of it or in whom the legal estate is vested: see s 7(b). Payment to such persons discharges the liability of the compensation authority to pay compensation but is without prejudice to the right of any person to recover the compensation from the persons to whom it is paid: see s 7 (amended by the Police Act 1964 s 63, Sch 9). For the meaning of 'compensation authority' see PARA 173 ante.

2 The words 'riotous' and 'riotously' are to be construed in accordance with the Public Order Act 1986 s 1: see s 10(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 555.

3 'House, shop or building' includes any premises appurtenant to the same: Riot (Damages) Act 1886 s 9.

4 See *ibid* s 6(b) (amended by the Merchant Shipping Act 1894 s 745, Sch 22). This provision covers also a bridge, wagonway or trunk for conveying minerals or other products from any mine or quarry: Riot (Damages) Act 1886 s 6(b) (as so amended).

5 See *ibid* s 2(1) (amended by the Police Act 1964 Sch 9; and the Police Act 1996 s 103(1), Sch 7 para 9). As to the application of this provision to ships and aircraft see PARA 173 note 6 ante.

6 See *Ford v Metropolitan Police District Receiver* [1921] 2 KB 344. See also *Field v Metropolitan Police Receiver* [1907] 2 KB 853, DC; *Munday v Metropolitan Police District Receiver* [1949] 1 All ER 337; *JW Dwyer Ltd v Metropolitan Police District Receiver* [1967] 2 QB 970, [1967] 1 All ER 1051. It seems that a riot can take place on enclosed premises: *Kamara v DPP* [1974] AC 104 at 116, [1973] 2 All ER 1242 at 1248, HL, per Lord Hailsham of St Marylebone LC. A riot may also occur on private land: *Gunter v Metropolitan Police District Receiver* (1888) 53 JP 249, 5 TLR 58.

7 *JW Dwyer Ltd v Metropolitan Police District Receiver* [1967] 2 QB 970 at 977-979, [1967] 2 All ER 1051 at 1053-1054 per Lyell J. See also *R v Sharp* [1957] 1 QB 552 at 560, [1957] 1 All ER 577 at 579, CA, per Lord Goddard CJ.

8 *JW Dwyer Ltd v Metropolitan Police District Receiver* [1967] 2 QB 970, [1967] 1 All ER 1051.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(2) FUNCTIONS AND POWERS OF POLICE AUTHORITIES/(ii) Functions in respect of Riot Damage/175. Claims for compensation.

### **175. Claims for compensation.**

A claim for compensation for riot damage must be made to the compensation authority<sup>1</sup> of the police area<sup>2</sup> in which the injury, stealing or destruction took place<sup>3</sup>, and a claim made otherwise than in accordance with regulations made by the Secretary of State<sup>4</sup> may be excluded<sup>5</sup>. A claim must be made in writing<sup>6</sup> in a prescribed form<sup>7</sup> and delivered to the chief executive to the compensation authority concerned<sup>8</sup>. Claims must be delivered within 14 clear days after the day on which the happenings giving rise to them occurred<sup>9</sup>, except that, on application made in

that behalf within that period, the compensation authority may for special cause extend the period for the delivery of a claim to 42 days, and where an application for extension of time is refused the applicant may, within seven days of the refusal, appeal to the Secretary of State, whose decision as to whether the claim should be received is conclusive<sup>10</sup>.

A claim must contain prescribed particulars<sup>11</sup>. If so required by the compensation authority, a claimant must verify his claim by making a statutory declaration<sup>12</sup> and by furnishing statutory declarations by other persons as to certain matters relevant to the claim; in any case, he must produce all such documents under his control as are needed to support his claim, deliver to the authority such copies of them or extracts from them as may be required, allow access to the premises, and produce the property for injury to which the claim is made<sup>13</sup>.

1 For the meaning of 'compensation authority' see PARA 173 ante. As to the circumstances giving rise to compensation see PARA 174 ante.

2 For the meaning of 'police area' see PARA 136 ante.

3 Riot (Damages) Act 1886 s 3(1) (amended by the Police Act 1964 s 63, Sch 9; and the Police Act 1996 Sch 7 para 10).

4 The regulations made under the Riot (Damages) Act 1886 s 3(2): see s 3(2). Copies of the regulations must be published in the London Gazette and in each police area and copies must be supplied by compensation authorities at a charge not exceeding 2p for each copy: s 3(3) (amended by virtue of the Decimal Currency Act 1969 s 10(1); and the Royal Proclamation dated 31 December 1984). See the Regulations under the Riot (Damages) Act 1886 as to claims for Compensation, dated 1 October 1921, SR & O 1921/1536 (amended by SI 1986/76). These regulations are in this title referred to as the Riot (Damages) Act 1886 Regulations 1921, SR & O 1921/1536 (as amended): see the text to notes 6-13 infra; and PARA 176 post. As to the Secretary of State see PARA 107 note 15 ante.

5 Riot (Damages) Act 1886 s 3(2).

6 For the meaning of 'writing' see PARA 115 note 9 ante.

7 For the prescribed form see the Riot (Damages) Act 1886 Regulations 1921, SR & O 1921/1536, reg 3, Appendix.

8 See *ibid* reg 1 (amended by SI 1986/76; and by virtue of the Police and Justice Act 2006 s 2, Sch 2 para 20(1)). As to chief executives of police authorities see PARA 168 ante.

9 See the Riot (Damages) Act 1886 Regulations 1921, SR & O 1921/1536, reg 2. As to the meaning of the expression 'clear days' see TIME vol 97 (2010) PARA 335.

10 See *ibid* reg 2, proviso. As to the computation of time generally see TIME vol 97 (2010) PARA 329 et seq.

11 The claim must specify the claimant's name and address, the day and hour of the happening giving rise to the claim, the nature and situation of the premises and the claimant's interest in them, and the circumstances in which the happening took place in sufficient detail to show that it was committed by persons riotously and tumultuously assembled together: see *ibid* reg 4. The claim must state separately the sums claimed under different heads (see reg 5), itemising different heads with actual or estimated costs of repair etc (see regs 6, 7), and must state generally the supporting evidence which the claimant will offer (see reg 8). It must also specify any compensation to which the claimant is entitled from other sources: see reg 8. As to the meaning of 'riotously' see PARA 174 note 2 ante.

12 As to statutory declarations see the Statutory Declarations Act 1835 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1024.

13 See the Riot (Damages) Act 1886 Regulations 1921, SR & O 1921/1536, reg 9.

## 176. Amount of compensation.

Where a claim to compensation for riot damage has been made<sup>1</sup>, the compensation authority<sup>2</sup> must inquire into its truth and, if satisfied, fix such compensation as appears to it just<sup>3</sup>. In fixing the amount, regard must be had to the conduct of the claimant, as respects the precautions taken by him, his being a party or accessory to the riotous or tumultuous assembly<sup>4</sup>, and any provocation offered to the persons assembled or otherwise<sup>5</sup>.

Where a claim relates to both property belonging to the claimant and property not belonging to him, separate awards of compensation may be made in respect of the several properties<sup>6</sup>.

Any amount received by the claimant by way of insurance or otherwise to recoup him in whole or in part for his loss, to the extent that it does not exceed the compensation fixed, must be deducted from the compensation and paid not to the claimant but to the insurer or other person who recouped him; and an insurance policy continues in force as if no payment had been made under it<sup>7</sup>. The position is similar where the claimant has been recouped otherwise than by a monetary payment, the value of the benefit received by him being equated with such a payment<sup>8</sup>. No costs are allowed to any claimant<sup>9</sup>.

Where compensation has been fixed or recovered in an action against the compensation authority<sup>10</sup>, the authority must pay the compensation out of the police fund<sup>11</sup>, together with all costs and expenses payable by the authority in or incidental to the execution of the statutory provisions<sup>12</sup>.

1 As to the circumstances giving rise to compensation see PARA 174 ante; and as to claims for compensation see PARA 175 ante.

2 For the meaning of 'compensation authority' see PARA 173 ante.

3 Riot (Damages) Act 1886 s 3(1) (amended by the Police Act 1964 s 63, Sch 9).

4 As to the meaning of 'riotous' see PARA 174 note 2 ante. As to 'riotous or tumultuous assembly' see *JW Dwyer Ltd v Metropolitan Police District Receiver* [1967] 2 QB 970, [1967] 2 All ER 1051; and PARA 174 ante.

5 Riot (Damages) Act 1886 s 2(1). See *Gunter v Metropolitan Police District Receiver* (1888) 53 JP 249, 5 TLR 58 (claim dismissed due to provocation towards the assembled crowd).

6 See the Riot (Damages) Act 1886 Regulations 1921, SR & O 1921/1536, reg 10. As to these regulations see PARA 175 note 4 ante. Provision may be made to ensure that the claimant pays the money over to the proper person: see reg 10.

7 See the Riot (Damages) Act 1886 s 2(2). See also *Rance v Hastings Corpn* (1913) 136 LT Jo 117. See further INSURANCE vol 25 (2003 Reissue) PARA 196 et seq.

8 See the Riot (Damages) Act 1886 s 2(2).

9 Riot (Damages) Act 1886 Regulations 1921, SR & O 1921/1536, reg 11.

10 As to such actions see PARA 177 post.

11 For the meaning of 'police fund' see PARA 167 note 3 post.

12 Riot (Damages) Act 1886 s 5(1) (amended by the Police Act 1964 Sch 9).

## 177. Action to recover compensation.

A claimant aggrieved by the refusal or failure of the compensation authority<sup>1</sup> to fix compensation for riot damage, or by the amount fixed, may bring an action against the authority to recover compensation in respect of all or any of the matters within his claim up to the amount mentioned in it<sup>2</sup>. Proceedings must be brought within six years of the date on which the cause of action accrued<sup>3</sup>, that is to say, of the date on which the compensation authority refused or failed to fix compensation or fixed it otherwise than to the claimant's satisfaction<sup>4</sup>.

1 For the meaning of 'compensation authority' see PARA 173 ante.

2 See the Riot (Damages) Act 1886 s 4(1) (amended by the Police Act 1964 s 63, Sch 9). If the claimant fails to recover any compensation or an amount exceeding that fixed by the authority he must pay the authority's costs: see the Riot (Damages) Act 1886 s 4(1) (as so amended). As to the circumstances giving rise to compensation see PARA 174 ante; as to claims for compensation see PARA 175 ante; and as to the amount of compensation see PARA 176 ante.

3 See the Limitation Act 1980 s 9(1); and LIMITATION PERIODS vol 68 (2008) PARAS 952, 1005.

4 See *Jarvis v Surrey County Council* [1925] 1 KB 554; and LIMITATION PERIODS vol 68 (2008) PARA 952.

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## (3) CHIEF OFFICERS OF POLICE AND THEIR FUNCTIONS

### (i) In general

#### 178. Chief officers of police forces.

A police force in England and Wales<sup>1</sup> is under the direction and control of the chief constable<sup>2</sup>. Every such police force must also have one or more deputy chief constables<sup>3</sup> and at least one assistant chief constable<sup>4</sup>.

The appropriate deputy chief constable<sup>5</sup> of a police force may exercise or perform any or all of the powers or duties of the chief constable of that force<sup>6</sup>: (1) during any absence, incapacity or suspension from duty of the chief constable<sup>7</sup>; (2) during any vacancy in the office of the chief constable<sup>8</sup>; or (3) at any other time, with the consent of the chief constable<sup>9</sup>. The chief constable of a police force must, after consulting the police authority responsible for maintaining the force, designate a person holding the rank of assistant chief constable in that force to exercise or perform any or all of the powers or duties of the chief constable during any period when: (a) the chief constable is absent, incapacitated or suspended from duty and the deputy chief constable, or each of the deputy chief constables, is also absent, incapacitated or suspended from duty<sup>10</sup>, or the office of the deputy chief constable, or of each of the deputy chief constables, is vacant<sup>11</sup>; or (b) the office of the chief constable is vacant and the office of the deputy chief constable, or of each of the deputy chief constables, is also vacant<sup>12</sup>, or the deputy chief constable, or each of the deputy chief constables, is absent, incapacitated or suspended from duty<sup>13</sup>. Only one person may be authorised to act at any one time by virtue of a designation under head (a) or head (b) above<sup>14</sup>. The power of an assistant chief constable to so act, or of a deputy chief constable to act by virtue of head (1) or head (2) above, is not exercisable for a continuous period exceeding three months<sup>15</sup> except with the consent of the Secretary of State<sup>16</sup>. These provisions<sup>17</sup> as to the exercise or performance of the powers or



duties of a chief constable are without prejudice to any other enactment<sup>18</sup> that makes provision for the exercise by any other person of powers conferred on a chief constable<sup>19</sup>.

If the chief constable of a police force which ceases to exist in consequence of an amalgamation scheme<sup>20</sup> is not appointed chief constable or other member of the successor force<sup>21</sup> as from the date of transfer<sup>22</sup>, he becomes a member of that force on that day<sup>23</sup>, but ceases to be such a member at the expiration of three months<sup>24</sup> unless he has then accepted and taken up an appointment in that force<sup>25</sup>.

1    Ie a police force maintained under the Police Act 1996 s 2: see PARA 136 ante. This does not include the metropolitan police force or City of London police force; as to the chief officers of those forces see PARAS 183, 187 post. For the meaning of 'police force' see PARA 102 note 11 ante.

2    Ibid s 10(1). As to the appointment of chief constables see s 11 (as amended); and PARA 179 post.

3    See ibid s 11A(1) (as added and amended); and PARA 180 post.

4    See ibid s 12(1); and PARA 181 post.

5    The appropriate deputy chief constable for these purposes is: (1) in the case of a police force that has only one deputy chief constable, the deputy chief constable; (2) in the case of a police force that has more than one deputy chief constable, the most senior deputy chief constable: ibid s 12A(1A) (s 12A added by the Criminal Justice and Police Act 2001 s 124(2); Police Act 1996 s 12A(1A)-(1C) added by the Police and Justice Act 2006 s 2, Sch 2 para 15(1), (3)). The chief constable of a police force that has more than one deputy chief constable must, after consulting the police authority responsible for maintaining the force, designate the deputy chief constables in order of seniority for the purposes of head (2) supra: Police Act 1996 s 12A(1B) (as so added). During any absence, incapacity or suspension from duty of the person who is designated as the most senior deputy chief constable for the purposes of head (2) supra, or is treated under this provision as the most senior deputy chief constable, the person designated as the next most senior deputy chief constable is treated as the most senior one for those purposes: s 12A(1C) (as so added). For the meaning of 'police authority' see PARA 139 note 1 ante.

6    Ibid s 12A(1) (s 12A as added (see note 5 supra); s 12A(1) amended by the Police and Justice Act 2006 Sch 2 para 15(1), (2)). As to the general functions of chief constables see PARA 188 et seq post.

7    Police Act 1996 s 12A(1)(a) (as added: see note 5 supra). As to the suspension from duty of chief constables see PARA 179 post.

8    Ibid s 12A(1)(b) (as added: see note 5 supra).

9    Ibid s 12A(1)(c) (as added: see note 5 supra).

10   Ibid s 12A(2)(a)(i) (s 12A as added (see note 5 supra); s 12A(2) substituted by the Police and Justice Act 2006 Sch 2 para 15(1), (4)).

11   Police Act 1996 s 12A(2)(a)(ii) (s 12A as added (see note 5 supra); s 12A(2) as substituted (see note 10 supra)).

12   Ibid s 12A(2)(b)(i) (s 12A as added (see note 5 supra); s 12A(2) as substituted (see note 10 supra)).

13   Ibid s 12A(2)(b)(ii) (s 12A as added (see note 5 supra); s 12A(2) as substituted (see note 10 supra)).

14   Ibid s 12A(3) (as added: see note 5 supra).

15   For the meaning of 'month' see PARA 140 note 17 ante.

16   Police Act 1996 s 12A(4) (as added: see note 5 supra). The Secretary of State may delegate to the chief inspector of constabulary his functions under s 12A(4) (as added): see s 54(3A)(c) (as added); and PARA 208 post. As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post. As to the chief inspector of constabulary see PARA 206 post.

17   Ie ibid s 12A(1)-(2) (as added): see the text to notes 5-13 supra.

18   For the meaning of 'enactment' see PARA 102 note 5 ante.

19 Police Act 1996 s 12A(5) (s 12A as added (see note 5 supra); s 12A(5) amended by the Police and Justice Act 2006 Sch 2 para 15(1), (5)).

20 le in consequence of an order under the Police Act 1996 s 32 (as amended) (see PARA 197 post), the Local Government Act 1972 s 58 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 86) or the Local Government Act 1992 s 17 (as amended) (see ELECTIONS AND REFERENDUMS).

21 'Successor force' in relation to a police force which ceases to exist in consequence of any order means a force to which members of that police force are transferred by virtue of the order: Police Act 1996 s 100(6)(a).

22 'Date of transfer' means the date as from which the members referred to in note 21 supra are transferred to the successor force: *ibid* s 100(6)(b).

23 *Ibid* s 100(1). If there is more than one successor force, he becomes a member of whichever is provided for by or under the order: s 100(1). While a person is a member of a police force by virtue only of this provision he holds the rank of assistant chief constable, but for the purposes of his pay, pension and other conditions of service he is treated as if he had continued to be chief constable of the force which ceased to exist, subject to s 10(1) (see the text to notes 1-2 supra): s 100(2).

Where the chief constable of a police force is engaged for a period of relevant service within s 97(1)(b), (c), (d), or (e) (see PARA 428 post), and before the end of that period that force ceases to exist, s 100(1) applies to the chief constable as if he were still the chief constable of that force, but with the substitution for references to the date of transfer of references to the end of the said period: s 100(5).

24 If a chief constable was appointed for a term which expires within three months of his becoming a member of a police force by virtue of these provisions, the reference to three months is treated as a reference to that term: see *ibid* s 100(4).

25 *Ibid* s 100(3). This provision is subject to regulations under s 50 (as amended) (see PARA 228 post): s 100(3).

## **UPDATE**

### **178 Chief officers of police forces**

NOTE 20--Local Government Act 1992 s 17 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

TEXT AND NOTE 23--1996 Act s 100(1) amended: Local Government and Public Involvement in Health Act 2007 Sch 1 para 19(3).

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## **(ii) Appointment and Removal of Chief Officers**

### **A. IN GENERAL**

#### **179. Appointment and removal of chief constables.**

The chief constable<sup>1</sup> of a police force in England and Wales<sup>2</sup> is appointed by the police authority<sup>3</sup> responsible for maintaining the force, subject to the approval of the Secretary of State<sup>4</sup> and to any regulations<sup>5</sup>. No person may be appointed as a chief constable of a police force unless he holds or has held such rank and for such period as the Secretary of State determines in respect of such appointments<sup>6</sup>.

The police authority, acting with the approval of the Secretary of State, may call upon the chief constable, in the interests of efficiency or effectiveness, to retire or to resign<sup>7</sup>. Before seeking

the approval of the Secretary of State, the police authority must give the chief constable an explanation in writing<sup>8</sup> of the authority's grounds for calling upon him, in the interests of efficiency or effectiveness, to retire or to resign<sup>9</sup>. The authority must also give him an opportunity to make representations<sup>10</sup> and must consider any representations made by him or on his behalf<sup>11</sup>. A chief constable who is called upon to retire or resign, must retire or resign with effect from such date as the police authority may specify, or with effect from such earlier date as may be agreed upon between him and the authority<sup>12</sup>.

The police authority, acting with the approval of the Secretary of State, may suspend from duty the chief constable if: (1) it is proposing to consider whether to exercise its power<sup>13</sup> to call upon the chief constable to retire or to resign and is satisfied that, in the light of the proposal, the maintenance of public confidence in the force maintained by the authority requires the suspension<sup>14</sup>; or (2) having been notified by the Secretary of State that he is proposing to consider whether to require the police authority to exercise that power, it is satisfied that, in the light of the Secretary of State's proposal, the maintenance of public confidence in that force requires the suspension<sup>15</sup>; or (3) it has exercised that power or been sent<sup>16</sup> a copy of a notice of the Secretary of State's intention to require it to exercise that power, but the retirement or resignation has not yet taken effect<sup>17</sup>. It is the duty of a police authority<sup>18</sup> to suspend the chief constable from duty if it is required<sup>19</sup> to do so by the Secretary of State<sup>20</sup>.

The Secretary of State may by regulations make provision as to the procedure to be followed in the exercise of any power conferred or duty imposed by the above provisions<sup>21</sup>.

1 As to chief constables see PARAS 178 ante, 188 et seq post.

2 I.e. a police force maintained under the Police Act 1996 s 2: see PARA 136 ante. This does not include the metropolitan police force or the City of London police force. As to the appointment and removal of the Metropolitan Police Commissioner see PARAS 183, 185 post; and as to the appointment and removal of the City of London Police Commissioner see PARA 187 post. For the meaning of 'police force' see PARA 102 note 11 ante.

3 For the meaning of 'police authority' see PARA 139 note 1 ante.

4 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

5 Ibid s 11(1). The regulations are those under s 50 (as amended) (see PARA 228 post): see s 11(1). The Secretary of State may delegate to the chief inspector of constabulary his functions under s 11(1): see s 54(3A) (b) (as added); and PARA 208 post. As to the chief inspector of constabulary see PARA 206 post.

6 Police Regulations 2003, SI 2003/527, reg 11(1). This provision is expressed to be subject to regs 9 and 10 (see PARA 232 post) and the Police Act 1996 s 11(1) (see the text to notes 1-5 supra): see the Police Regulations 2003, SI 2003/527, reg 11(1). For further provisions as to appointment, promotion and retirement see PARA 232 et seq post.

7 Police Act 1996 s 11(2) (amended by the Police Reform Act 2002 s 30(2)(a)). This provision is expressed to be without prejudice to any regulations under the Police Act 1996 s 50 (as amended) (see PARA 228 post) or under the Police Pensions Act 1976 (see PARA 407 et seq post): see the Police Act 1996 s 11(2). As to the power of the Secretary of State to require a police authority to exercise this power under s 11 (as amended), and as to his power to make regulations as to the procedure to be followed in the exercise of such power, see PARA 182 post.

8 For the meaning of 'writing' see PARA 115 note 9 ante.

9 Police Act 1996 s 11(3)(a) (s 11(3) amended by the Police Reform Act 2002 s 31(2)).

10 Police Act 1996 s 11(3)(b) (as amended: see note 9 supra). The opportunity given to the chief constable to make representations must include the opportunity to make them in person: s 11(3) (as so amended).

11 Ibid s 11(3) (as amended: see note 9 supra).

12 Ibid s 11(4) (amended by the Police Reform Act 2002 s 30(2)(b)).

13 I.e. its power under the Police Act 1996 s 11(2) (as amended): see the text to note 7 supra.

14 Ibid s 11(3A)(a) (s 11(3A) added by the Police Reform Act 2002 s 32(2)).

15 Police Act 1996 s 11(3A)(b) (as added: see note 14 supra). Public confidence means that of the public at large and is not limited to public confidence within the area of the police force in question: see *R (on the application of the Secretary of State for the Home Department) v Humberside Police Authority* [2004] EWHC 1642 (Admin), (2004) Times, 9 July, [2004] All ER (D) 48 (Jul). As to the power of the Secretary of State to require a police authority to call upon a chief constable to retire or resign see the Police Act 1996 s 42 (as amended); and PARA 182 post.

16 Ie under ibid s 42(2A) (as added): see PARA 182 post.

17 Ibid s 11(3A)(c) (as added: see note 14 supra).

18 Ie without reference to the provisions of ibid s 11(3A)(a)-(c) (as added): see the text to notes 13-17 supra.

19 Ie under ibid s 42(1A) (as added): see PARA 182 post.

20 Ibid s 11(3A) (as added: see note 14 supra).

21 Ibid s 42A(1) (s 42A added by the Police Reform Act 2002 s 34). As to such regulations see PARA 182 post.

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### **180. Appointment and removal of deputy chief constables.**

Every police force in England and Wales<sup>1</sup> must have one or more deputy chief constables<sup>2</sup>. The appointment of a person to be a deputy chief constable of a police force must be made<sup>3</sup> by the police authority<sup>4</sup> responsible for maintaining that force<sup>5</sup>. Where the police authority responsible for maintaining a police force proposes to increase the number of deputy chief constables that the force has<sup>6</sup>, or proposes to appoint a particular person to be a deputy chief constable<sup>7</sup>, it may do so only after consultation with the chief constable and subject to the approval of the Secretary of State<sup>8</sup>.

A police authority may call upon a deputy chief constable to retire or resign in the interests of efficiency or effectiveness, or may or must suspend him from duty, in the same circumstances<sup>9</sup> as apply in the case of a chief constable<sup>10</sup>.

1 Ie every police force maintained under the Police Act 1996 s 2: see PARA 136 ante. This does not include the metropolitan police force or the City of London police force. As to the appointment and removal of the Metropolitan Police Commissioner and the deputy metropolitan police commissioner see PARAS 183-185 post. As to the appointment and removal of the City of London Police Commissioner see PARA 187 post. For the meaning of 'police force' see PARA 102 note 11 ante.

2 Ibid s 11A(1) (s 11A added by the Criminal Justice and Police Act 2001 s 123(1); Police Act 1996 s 11A(1) amended by the Police and Justice Act 2006 s 2, Sch 2 para 14(1), (2)). As to the powers of a deputy chief constable to exercise or perform any or all of the powers or duties of a chief constable see PARA 178 ante.

3 The appointment is to be made in accordance with regulations under the Police Act 1996 s 50 (as amended): see PARA 228 post. As to such regulations see the Police Regulations 2003, SI 2003/527; and PARA 232 post.

4 For the meaning of 'police authority' see PARA 139 note 1 ante.

5 Police Act 1996 s 11A(2) (s 11A as added (see note 2 supra); s 11A(2) substituted by the Police and Justice Act 2006 Sch 2 para 14(1), (3)).

6 Police Act 1996 s 11A(2A)(a) (s 11A as added (see note 2 supra); s 11A(2A) added by the Police and Justice Act 2006 Sch 2 para 14(1), (3)).

7 Police Act 1996 s 11A(2A)(b) (as added: see notes 2, 6 supra).

8 Ibid s 11A(2A) (as added: see notes 2, 6 supra). As to chief constables see PARAS 178 ante, 188 et seq post. As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

9 Ie the provisions of ibid s 11(2)-(4) (as amended) (see PARA 179 ante) apply in relation to a deputy chief constable as they apply in relation to a chief constable but with modifications to s 11(3A) (as added): see s 11A(3) (s 11A as added (see note 2 supra); s 11A(3) amended by the Police Reform Act 2002 s 32(4)).

10 Police Act 1996 s 11A(3) (as added and amended: see notes 2, 9 supra).

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### **181. Appointment and removal of assistant chief constables.**

The ranks that may be held in a police force in England and Wales<sup>1</sup> include that of assistant chief constable, and in every such police force there must be at least one person holding that rank<sup>2</sup>. Appointments and promotions to the rank of assistant chief constable are made<sup>3</sup> by the police authority<sup>4</sup> after consultation with the chief constable and subject to the approval of the Secretary of State<sup>5</sup>. A police authority may call upon an assistant chief constable to retire or resign in the interests of efficiency or effectiveness, or may or must suspend him from duty, in the same circumstances<sup>6</sup> as apply in the case of a chief constable<sup>7</sup>.

1 Ie a police force maintained under the Police Act 1996 s 2: see PARA 136 ante. This does not include the metropolitan police force or the City of London police force. As to the appointment of assistant metropolitan police commissioners see PARA 186 post. As to the City of London police force see PARA 138 ante. For the meaning of 'police force' see PARA 102 note 11 ante.

2 Ibid s 12(1). As to the power of an assistant chief constable to exercise the functions of the chief constable see PARA 178 ante.

3 The appointment is to be made in accordance with regulations under ibid s 50 (as amended) (see PARA 228 post): s 12(2). As to such regulations see the Police Regulations 2003, SI 2003/527; and PARA 232 post.

4 For the meaning of 'police authority' see PARA 139 note 1 ante.

5 Police Act 1996 s 12(2). The Secretary of State may delegate to the chief inspector of constabulary his functions under s 12(2): see s 54(3A)(b) (as added); and PARA 208 post. As to chief constables see PARAS 178 ante, 188 et seq post. As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post. As to the chief inspector of constabulary see PARA 206 post.

6 Ie the provisions of ibid s 11(2)-(4) (as amended) (see PARA 179 ante) apply to an assistant chief constable as they apply to a chief constable but with modifications to s 11(3A) (as added): see s 12(3) (amended by the Police Reform Act 2002 s 32(5)(a), (b)).

7 Police Act 1996 s 12(3) (as amended: see note 6 supra). See *Surrey Police Authority v Beckett* [2001] EWCA Civ 1253, [2002] ICR 257, [2001] All ER (D) 432 (Jul).

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### **182. Power of the Secretary of State to require removal of chief officers.**

The Secretary of State<sup>1</sup> may require the Metropolitan Police Authority<sup>2</sup> to exercise its power<sup>3</sup> to call upon the Metropolitan Police Commissioner or deputy metropolitan police commissioner<sup>4</sup>, in the interests of efficiency or effectiveness, to retire or to resign<sup>5</sup>; or require a police authority maintaining a police force<sup>6</sup> in England and Wales to exercise its power<sup>7</sup> to call upon the chief constable of that force, in the interests of efficiency or effectiveness, to retire or to resign<sup>8</sup>.

Where:

- 32 (1) the Secretary of State is proposing to exercise such power<sup>9</sup> in relation to the Metropolitan Police Authority or, as the case may be, the other police authority in question, or is proposing to consider so exercising that power<sup>10</sup>;
- 33 (2) the Metropolitan Police Authority or the other police authority in question is itself proposing to exercise its power to call upon the Commissioner or deputy commissioner or, as the case may be, the chief constable of the force in question to retire or to resign, or is proposing to consider so exercising that power<sup>11</sup>; and
- 34 (3) the power mentioned in head (1) or head (2) above has been exercised but the retirement or resignation has not yet taken effect<sup>12</sup>,

the Secretary of State may also, in any case in which he considers that it is necessary for the maintenance of public confidence in the force in question, require the Metropolitan Police Authority or other police authority to suspend the Commissioner, deputy commissioner or chief constable, as the case may be, from duty<sup>13</sup>.

Before requiring the exercise by the Metropolitan Police Authority or any other police authority of its power to call upon the Commissioner or deputy commissioner or the chief constable of the force in question to retire or to resign, the Secretary of State must give the officer concerned a notice<sup>14</sup> in writing<sup>15</sup> and give that officer an opportunity to make representations to the Secretary of State<sup>16</sup>. The Secretary of State must consider any such representations made to him<sup>17</sup>.

Where the Secretary of State proposes to require the exercise of a power<sup>18</sup> to call upon the Commissioner or deputy commissioner or the chief constable of a force to retire or to resign, he must appoint one or more persons (one at least of whom must be a person who is not an officer of police or of a government department) to hold an inquiry and report to him and must consider any such report made to him<sup>19</sup>. At such an inquiry the officer in question, and the Metropolitan Police Authority or, as the case may be, the police authority concerned, is entitled<sup>20</sup> to make representations to the inquiry<sup>21</sup>.

The Secretary of State may by regulations make provision as to the procedure to be followed in the exercise of any power conferred or duty imposed by the provisions<sup>22</sup> relating to the removal of chief officers<sup>23</sup>. Before making any such regulations, the Secretary of State must consult with the Association of Police Authorities<sup>24</sup>, the Association of Chief Police Officers<sup>25</sup>, and such other persons<sup>26</sup> as he thinks fit<sup>27</sup>. The regulations may make different provision for different cases and circumstances<sup>28</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

- 2 As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.
- 3 le its power under the Police Act 1996 s 9E (as added): see PARA 185 post.
- 4 As to the appointment and removal of the Metropolitan Police Commissioner and the deputy metropolitan police commissioner see PARAS 183-185 post.
- 5 Police Act 1996 s 42(1)(a) (s 42(1) (2) substituted by the Police Reform Act 2002 s 33(1), (2)). If the Secretary of State exercises the power conferred by the Police Act 1996 s 42(1) (as substituted) in relation to the Commissioner or the deputy commissioner or a chief constable, the Metropolitan Police Authority or other police authority concerned: (1) is not required to seek the Secretary of State's approval before calling upon the Commissioner or deputy commissioner or chief constable in question, in the interests of efficiency or effectiveness, to retire or to resign (s 42(4A)(a) (s 42(4A)-(4C) added by the Police Reform Act 2002 s 33(1), (6))); and (2) is not required to give the Commissioner, the deputy commissioner or the chief constable a written explanation of the authority's grounds for calling upon him to retire or to resign, to give him an opportunity to make representations to it or to consider any representations made by him (Police Act 1996 s 42(4A)(b) (as so added)). In s 42 (as amended) a reference to the police authority concerned, in relation to a chief constable, is to the police authority which maintains the police force of which he is chief constable: s 42(4C) (as so added).
- 6 le a police authority maintaining a police force under ibid s 2: see PARA 136 ante. For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'police force' see PARA 102 note 11 ante.
- 7 le its power under ibid s 11 (as amended): see PARA 179 ante.
- 8 Ibid s 42(1)(b) (as substituted: see note 5 supra). See also note 5 supra. As to chief constables see PARAS 178 ante, 188 et seq post.
- 9 le the power under ibid s 42(1) (as substituted): see the text to notes 1-8 supra.
- 10 Ibid s 42(1B)(a) (s 42(1A), (1B), (2A), (2B) added by the Police Reform Act 2002 s 33(1), (2)).
- 11 Police Act 1996 s 42(1B)(b) (as added: see note 10 supra).
- 12 Ibid s 42(1B)(c) (as added: see note 10 supra).
- 13 Ibid s 42(1A) (as added: see note 10 supra). Public confidence in this context is that of the public at large and is not limited to public confidence within the area of the police force in question: *R (on the application of the Secretary of State for the Home Department) v Humberside Police Authority* [2004] EWHC 1642 (Admin), (2004) Times, 9 July, [2004] All ER (D) 48 (Jul).
- 14 Where the Secretary of State gives such a notice, he must send a copy of the notice to the Metropolitan Police Authority or other police authority concerned: Police Act 1996 s 42(2A) (as added: see note 10 supra).
- 15 Ibid s 42(2)(a) (as substituted: see note 5 supra). The notice must inform the officer of the Secretary of State's intention to require the exercise of that power (s 42(2)(a)(i) (as so substituted)); and explain the Secretary of State's grounds for requiring the exercise of that power (s 42(2)(a)(ii) (as so substituted)). For the meaning of 'writing' see PARA 115 note 9 ante.
- 16 Ibid s 42(2)(b) (as substituted: see note 5 supra).
- 17 Ibid s 42(2B) (as added: see note 10 supra).
- 18 le a power mentioned in ibid s 42(1) (as substituted): see notes 3, 7 supra.
- 19 Ibid s 42(3) (amended by the Police Reform Act 2002 s 33(1), (3)).
- 20 le in accordance with any regulations under the Police Act 1996 s 42A (as added): see the text to notes 22-28 infra.
- 21 Ibid s 42(3A)(a), (b) (s 42(3A), (3B) added by the Police Reform Act 2002 s 33(1), (4)). The entitlement of the Commissioner, deputy commissioner or, as the case may be, the chief constable in question to make representations includes the entitlement to make them in person: Police Act 1996 s 42(3B) (as so added). The costs incurred by the Commissioner, the deputy commissioner or a chief constable in respect of an inquiry, assessed in such manner as the Secretary of State may direct, must be defrayed out of the police fund: s 42(4) (amended by the Police Reform Act 2002 s 33(1), (5)). For the meaning of 'police fund' see PARA 167 note 3 post.

22 le the Police Act 1996 s 9E (as added) (see PARA 185 post), s 11 (as amended) (see PARA 179 ante) or s 42 (as amended) (see the text to notes 1-22 supra).

23 Ibid s 42A(1) (s 42A added by the Police Reform Act 2002 s 34). The power of the Secretary of State to make such regulations is exercisable by statutory instrument: Police Act 1996 s 102. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 42A(4) (as so added). At the date at which this volume states the law no such regulations had been made.

24 Ibid s 42A(2)(a) (s 42A as added (see note 23 supra); s 42A(2)(a), (b) substituted by the Police and Justice Act 2006 s 6(1), Sch 4 para 4). As to consultation with the Association of Police Authorities see PARA 163 note 7 ante.

25 Police Act 1996 s 42A(2)(b) (as added and substituted: see notes 23, 24 supra). As to consultation with the Association of Chief Police Officers see PARA 163 note 7 ante. As to the Association of Chief Police Officers see PARA 423 post.

26 For the meaning of 'person' see PARA 110 note 6 ante.

27 Police Act 1996 s 42A(2)(c) (as added: see note 23 supra).

28 Ibid s 42A(3) (as added: see note 23 supra).

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## ***B. METROPOLITAN POLICE***

### **183. Appointment of the Metropolitan Police Commissioner.**

There is a Metropolitan Police Commissioner<sup>1</sup> who is appointed by Her Majesty by warrant under the sign manual<sup>2</sup>. A person appointed as Metropolitan Police Commissioner holds office at Her Majesty's pleasure<sup>3</sup>. Before recommending to Her Majesty the appointment of a person as the Metropolitan Police Commissioner, the Secretary of State<sup>4</sup> must have regard to any recommendations made to him by the Metropolitan Police Authority<sup>5</sup> and any representations made to him by the Mayor of London<sup>6</sup>.

1 Police Act 1996 s 9B(1) (s 9B added by the Greater London Authority Act 1999 s 315).

2 See the Police Act 1996 s 9B(2) (as added: see note 1 supra). As to the royal sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 908. Any appointment of a Metropolitan Police Commissioner is subject to regulations under s 50 (as amended) (see PARA 228 post): s 9B(4) (as so added). As to such regulations see PARA 232 post. As to the removal of the Metropolitan Police Commissioner see PARA 185 post. As to the functions of the Metropolitan Police Commissioner see PARA 189 post.

3 Ibid s 9B(3) (as added: see note 1 supra).

4 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

5 Ibid s 9B(5)(a) (as added: see note 1 supra). As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

6 Ibid s 9B(5)(b) (as added: see note 1 supra). Any functions exercisable by the Mayor of London under s 9B(5) (as added) may only be exercised by him personally: s 9B(6) (as so added). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.



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#### **184. Appointment of deputy metropolitan police commissioner.**

There is a deputy metropolitan police commissioner<sup>1</sup> who is appointed by Her Majesty by warrant under the sign manual<sup>2</sup>. A person appointed as the deputy commissioner holds office at Her Majesty's pleasure<sup>3</sup>. Before recommending to Her Majesty the appointment of a person as the deputy commissioner, the Secretary of State<sup>4</sup> must have regard to any recommendations made to him by the Metropolitan Police Authority<sup>5</sup> and any representations made to him by the Metropolitan Police Commissioner<sup>6</sup>.

The deputy commissioner may exercise any or all of the powers and duties of the Metropolitan Police Commissioner<sup>7</sup>: (1) during any absence, incapacity or suspension from duty of the Commissioner<sup>8</sup>; (2) during any vacancy in the office of the Commissioner<sup>9</sup>; or (3) at any other time, with the consent of the Commissioner<sup>10</sup>. The deputy commissioner must not so act for a continuous period exceeding three months<sup>11</sup>, except with the consent of the Secretary of State<sup>12</sup>. The deputy commissioner also has all the powers and duties of an assistant metropolitan police commissioner<sup>13</sup>.

1 Police Act 1996 s 9D(1) (s 9D added by the Greater London Authority Act 1999 s 317).

2 See the Police Act 1996 s 9D(2) (as added: see note 1 supra). As to the royal sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 908. Any appointment of a deputy commissioner is subject to regulations under s 50 (as amended) (see PARA 228 post): s 9D(4) (as so added). As to such regulations see PARA 232 post. As to the removal of the deputy commissioner see PARA 185 post.

3 Ibid s 9D(3) (as added: see note 1 supra).

4 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

5 Ibid s 9D(5)(a) (as added: see note 1 supra). As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

6 Ibid s 9D(5)(b) (as added: see note 1 supra). As to the Metropolitan Police Commissioner see PARA 183 ante.

7 As to the functions of the Metropolitan Police Commissioner see PARA 189 post.

8 Police Act 1996 s 9C(1)(a) (s 9C added by the Greater London Authority Act 1999 s 316). As to the suspension from duty of the Metropolitan Police Commissioner see PARA 185 post.

9 Police Act 1996 s 9C(1)(b) (as added: see note 8 supra). As to the appointment of the Metropolitan Police Commissioner see PARA 183 ante.

10 Ibid s 9C(1)(c) (as added: see note 8 supra).

11 For the meaning of 'month' see PARA 140 note 17 ante.

12 Police Act 1996 s 9C(2) (as added: see note 8 supra).

13 Ibid s 9C(3) (as added: see note 8 supra). As to assistant metropolitan police commissioners see PARA 186 post.

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### **185. Removal of the Metropolitan Police Commissioner or deputy commissioner.**

The Metropolitan Police Authority<sup>1</sup>, acting with the approval of the Secretary of State<sup>2</sup>, may call upon the Metropolitan Police Commissioner<sup>3</sup> or the deputy metropolitan police commissioner<sup>4</sup>, in the interests of efficiency or effectiveness, to retire or to resign<sup>5</sup>. Before seeking the approval of the Secretary of State, the Authority must give the Commissioner or the deputy commissioner, as the case may be, an explanation in writing<sup>6</sup> of its grounds for calling upon him, in the interests of efficiency or effectiveness, to retire or to resign<sup>7</sup>. The Authority must also give the officer concerned an opportunity to make representations<sup>8</sup> and must consider any such representations made by him or on his behalf<sup>9</sup>. Where the Commissioner or the deputy commissioner is called upon to retire or resign, he must retire or resign with effect from such date as the Authority may specify, or with effect from such earlier date as may be agreed upon between him and the Authority<sup>10</sup>.

The Authority, acting with the approval of the Secretary of State, may suspend the Commissioner or the deputy commissioner if: (1) it is proposing to consider whether to exercise its power<sup>11</sup> to call upon either of them to retire or to resign and is satisfied that, in the light of the proposal, the maintenance of public confidence in the metropolitan police force<sup>12</sup> requires the suspension<sup>13</sup>; or (2) having been notified by the Secretary of State that he is proposing to consider whether to require the Authority to exercise that power, it is satisfied that, in the light of the Secretary of State's proposal, the maintenance of public confidence in that force requires the suspension<sup>14</sup>; or (3) it has exercised that power or been sent<sup>15</sup> a copy of a notice of the Secretary of State's intention to require it to exercise that power, but the retirement or resignation has not yet taken effect<sup>16</sup>. It is the duty of the authority (without reference to the provisions of heads (1) to (3) above) to suspend the Commissioner or the deputy commissioner from duty if it is required to do so<sup>17</sup> by the Secretary of State<sup>18</sup>.

1 As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

2 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

3 As to the Metropolitan Police Commissioner see PARA 183 ante.

4 As to the deputy metropolitan police commissioner see PARA 184 ante.

5 Police Act 1996 s 9E(1), (4) (s 9E added by the Greater London Authority Act 1999 s 318; Police Act 1996 s 9E(1) amended by the Police Reform Act 2002 s 30(1)(a)). The Police Act 1996 s 9E (as added and amended) is without prejudice to s 9B(3) (as added) (see PARA 183 ante), s 9D(3) (as added) (see PARA 184 ante), any regulations under s 50 (as amended) (see PARA 228 post) or any regulations under the Police Pensions Act 1976 (see PARA 407 post): Police Act 1996 s 9E(5) (as so added).

As to the power of the Secretary of State to require the Metropolitan Police Authority to exercise this power under s 9E (as added), and as to his power to make regulations as to the procedure to be followed in the exercise of such power, see PARA 182 ante.

6 For the meaning of 'writing' see PARA 115 note 9 ante.

7 Police Act 1996 s 9E(2)(a), (4) (as added (see note 5 supra); s 9E(2) amended by the Police Reform Act 2002 s 31(1)).

8 Police Act 1996 s 9E(2)(b), (4) (as added (see note 5 supra); s 9E(2) as amended (see note 7 supra)).

9 Ibid s 9E(2), (4) (as added (see note 5 supra); s 9E(2) as amended (see note 7 supra)).

- 10 Ibid s 9E(3), (4) (as added: see note 5 supra).
- 11 Ie its power under ibid s 9E(1) (as added and amended): see the text to notes 1-5 supra.
- 12 As to the metropolitan police force see PARA 137 ante.
- 13 Police Act 1996 s 9E(2A)(a), (4) (s 9E as added (see note 5 supra); and s 9E(2A) added by the Police Reform Act 2002 s 32(1)).
- 14 Police Act 1996 s 9E(2A)(b), (4) (as added: see notes 5, 13 supra). See also note 5 supra.
- 15 Ie under ibid s 42(2A) (as added): see PARA 182 ante.
- 16 Ibid s 9E(2A)(c), (4) (as added: see notes 5, 13 supra).
- 17 Ie under ibid s 42(1A) (as added): see PARA 182 ante.
- 18 Ibid s 9E(2A), (4) (as added: see note 13 supra).

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#### **186. Assistant metropolitan commissioners, deputy assistant metropolitan commissioners and commanders.**

The ranks that may be held in the metropolitan police force<sup>1</sup> include those of assistant metropolitan police commissioner<sup>2</sup>, deputy assistant metropolitan police commissioner<sup>3</sup>, and commander<sup>4</sup>. Any appointment of an assistant commissioner, a deputy assistant commissioner or a commander is made by the Metropolitan Police Authority<sup>5</sup>, but subject to the approval of the Secretary of State<sup>6</sup> and to regulations<sup>7</sup>. An assistant commissioner, a deputy assistant commissioner or a commander may be called upon by the Authority, in the interests of efficiency or effectiveness, to retire or to resign or may be suspended from duty by the Authority, in the same circumstances<sup>8</sup> as apply in the case of the Metropolitan Police Commissioner<sup>9</sup>.

An assistant commissioner may exercise any of the powers and duties of the Metropolitan Police Commissioner<sup>10</sup> with the consent of the Commissioner<sup>11</sup>.

- 1 As to the metropolitan police force see PARA 137 ante.
- 2 Police Act 1996 s 9F(1) (s 9F added by the Greater London Authority Act 1999 s 319).
- 3 Police Act 1996 s 9FA(1) (s 9FA added by the Criminal Justice and Police Act 2001 s 122(1)).
- 4 Police Act 1996 s 9G(1) (s 9G added by the Greater London Authority Act 1999 s 320).
- 5 As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.
- 6 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.
- 7 Ibid s 9F(2) (as added: see note 2 supra); s 9FA(2) (as added: see note 3 supra); s 9G(2) (as added: see note 4 supra). The regulations referred to in the text are those under s 50 (as amended) (see PARA 228 post). As to such regulations see PARA 232 et seq post. The Secretary of State may delegate to the chief inspector of constabulary his functions under ss 9F(2), 9FA(2), 9G(2) (all as added): see s 54(3A)(a) (as added); and PARA 208 post. As to the chief inspector of constabulary see PARA 206 post.

8 le the provisions of *ibid* s 9E(1)-(3) (as added and amended) (see PARA 185 ante) apply in relation to an assistant commissioner, a deputy assistant commissioner or a commander as they apply to the Metropolitan Police Commissioner but with modifications to s 9E(2A) (as added): see s 9F(3) (as added (see note 2 supra); and amended by the Police Reform Act 2002 s 32(3)); Police Act 1996 s 9FA(3) (as added (see note 3 supra); and amended by the Police Reform Act 2002 s 32(3)); Police Act 1996 s 9G(3) (as added (see note 4 supra); and amended by the Police Reform Act 2002 s 32(3)). The Police Act 1996 ss 9F(3), 9FA(3), 9G(3) (all as added and amended) are without prejudice to any regulations under s 50 (as amended) (see PARAS 228, 232 et seq post) or any regulations under the Police Pensions Act 1976 (see PARA 407 post): Police Act 1996 ss 9F(4), 9FA(4), 9G(4) (all as so added).

9 *Ibid* s 9F(3) (as added: see note 2 supra); s 9FA(3) (as added: see note 3 supra); s 9G(3) (as added: see note 4 supra). As to the Metropolitan Police Commissioner see PARA 183 ante.

10 As to the functions of the Metropolitan Police Commissioner see PARA 189 post.

11 Police Act 1996 s 9F(5) (as added: see note 2 supra). This provision is without prejudice to any regulations under s 50 (as amended) (see PARAS 228, 232 et seq post): s 9F(6) (as so added).

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## **C. CITY OF LONDON**

### **187. The City of London Police Commissioner.**

The City of London Police Commissioner is the chief officer of police for the City of London police<sup>1</sup>. He is appointed by the Common Council of the City of London<sup>2</sup> with the approval of the Sovereign, signified by the Secretary of State<sup>3</sup>. The Sovereign or the Court of Aldermen of the City of London<sup>4</sup> may remove the Commissioner for misconduct or other reasonable cause<sup>5</sup>. If the Commissioner is absent, on account of illness or otherwise, the officer of the City of London Police next in authority may act in his place for such time as may be directed by the Lord Mayor of the City of London and sanctioned by the Secretary of State<sup>6</sup>. For pension purposes the Commissioner is treated as a member of the City of London police<sup>7</sup>.

1 See the Police Act 1996 s 101(1); and PARA 138 ante.

2 As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

3 City of London Police Act 1839 s 3 (amended by the Statute Law (Repeals) Act 1989). As to the Secretary of State see PARA 107 note 15 ante.

4 As to the Court of Aldermen of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 47.

5 City of London Police Act 1839 s 3 (as amended: see note 3 supra).

6 *Ibid* s 25. As to the Lord Mayor of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 44 et seq.

7 See the Police Pensions Act 1976 s 11(4)(a); and PARA 407 note 5 post.

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### **(iii) General Functions of Chief Officers**

## 188. General functions of chief officers of police.

It is the duty of a chief officer of police to secure the preservation of the Queen's peace and the enforcement of the law in his area, and he is responsible for the disposition and control of his force<sup>1</sup>. As respects such operational matters he acts on his own responsibility<sup>2</sup> and may not be given instructions by either his police authority or a Minister of the Crown<sup>3</sup>. However, the Secretary of State<sup>4</sup> may issue codes of practice relating to the discharge of their functions by the chief officers of police if he considers it necessary to do so for the purpose of promoting the efficiency and effectiveness generally of police forces<sup>5</sup>.

In addition to this general duty and certain specific functions<sup>6</sup>, chief officers have functions in relation to the formation and implementation of crime and disorder strategies<sup>7</sup>, the control of street collections<sup>8</sup>, the issue of firearm certificates<sup>9</sup> and the registration of firearms dealers<sup>10</sup>, and a chief officer may object to the grant or renewal of certain permits and licences<sup>11</sup>. He also has functions relating to public order<sup>12</sup>.

1 *R v Metropolitan Police Comr, ex p Blackburn* [1968] 2 QB 118 at 135-136, [1968] 1 All ER 763 at 769, CA, per Lord Denning MR. As to chief officers of police see PARA 178 et seq ante. As to the preservation of the Queen's peace see PARA 477 et seq post. As to police areas see PARA 136 ante. As to collaboration agreements and mutual aid between forces see PARA 231 post.

2 As to the chief constables discretion in relation to operational matters see *R v Chief Constable of Sussex, ex p International Trader's Ferry Ltd* [1999] 1 All ER 129 at 136-137, 140-141, [1998] 3 WLR 1260 at 1268, 1272, HL, per Lord Slynn of Hadley.

3 *R v Metropolitan Police Comr, ex p Blackburn* [1968] 2 QB 118 at 135-136, [1968] 1 All ER 763 at 769, CA, per Lord Denning MR. See also *R v Metropolitan Police Comr, ex p Blackburn (No 3)* [1973] QB 241, [1973] 1 All ER 324, CA. As to police authorities see PARA 139 et seq ante.

4 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

5 See the Police Act 1996 s 39A (as added); and PARA 201 post.

6 See PARAS 189-194 post.

7 See the Crime and Disorder Act 1998 ss 5, 6 (both as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 855.

8 See PARA 171 ante.

9 See PARA 528 post.

10 See PARA 528 post.

11 See eg LICENSING AND GAMBLING.

12 See the Public Order Act 1986 ss 12, 13 (both as amended) (processions); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 579-580.

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## 189. Functions of the Metropolitan Police Commissioner.

In addition to the powers and duties of chief officers generally<sup>1</sup>, the Metropolitan Police Commissioner<sup>2</sup> has certain powers which outside the metropolitan police district<sup>3</sup> are often exercised by police authorities, local authorities or justices of the peace.

The Commissioner may make regulations for the routes to be observed, and for preventing obstructions in the streets, on the occasion of public processions, rejoicings and illuminations and may give directions for preventing obstruction outside royal palaces, public offices, Parliament, courts of law and magistrates' courts, theatres and other places of public resort and in any case where the streets may be thronged or liable to be obstructed<sup>4</sup>. The Commissioner also gives authorisation for demonstrations in any designated area within one kilometre of Parliament Square<sup>5</sup>.

With the approval of the Secretary of State<sup>6</sup>, the Commissioner may make regulations as to the carrying on of business by costermongers, street hawkers and itinerant traders<sup>7</sup>. He may take proceedings if an unauthorised fair is held in the metropolitan police district<sup>8</sup>. By written order, he may authorise a superintendent to enter places used for fighting or baiting animals<sup>9</sup>. He also licenses house to house collections in the metropolitan police district for charitable purposes<sup>10</sup>.

1 As to the powers and duties of chief officers of police generally see PARA 188 ante.

2 As to the Metropolitan Police Commissioner see PARA 183 ante.

3 As to the metropolitan police district see PARA 137 ante.

4 See the Metropolitan Police Act 1839 s 52 (amended by the Statute Law Revision (No 2) Act 1888; and the Access to Justice Act 1999 s 78(2), Sch 11 paras 1, 2). The Commissioner may also give orders for regulating the passage of vessels on any occasion when large crowds may assemble: see the Port of London Act 1968 s 119 (as amended); and WATER AND WATERWAYS vol 101 (2009) PARA 712.

5 See the Serious Organised Crime & Police Act 2005 s 134; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 583.

6 As to the Secretary of State see PARA 107 note 15 ante.

7 See the Metropolitan Streets Act Amendment Act 1867 s 1 (amended by the Statute Law Revision Act 1875). Under this power regulations dated 28 December 1869 have been made, which apply up to a radius of six miles from Charing Cross, excluding the City of London.

8 See the Metropolitan Police Act 1839 s 39 (as amended); and MARKETS, FAIRS AND STREET TRADING vol 29(2) (Reissue) PARAS 1066-1067.

9 See the Metropolitan Police Act 1839 s 47 (as amended); and ANIMALS vol 2 (2008) PARA 830.

10 See the House to House Collections Act 1939 s 2(1A) (as added); and CHARITIES vol 8 (2010) PARA 464.

## UPDATE

### 189 Functions of the Metropolitan Police Commissioner

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(3) CHIEF OFFICERS OF POLICE AND THEIR FUNCTIONS/(iii) General Functions of Chief Officers/190. Functions of the City of London Police Commissioner.

### 190. Functions of the City of London Police Commissioner.

In the same way as the Metropolitan Police Commissioner, the City of London Police Commissioner has certain special powers in addition to the powers and duties of chief officers generally<sup>1</sup>.

He has similar powers to those of the Metropolitan Police Commissioner to make regulations and to give directions as to the routes to be observed and for preventing obstruction on the occasion of public processions<sup>2</sup>. The Commissioner may by order in writing authorise a superintendent to enter places used for fighting or baiting animals and gaming houses<sup>3</sup>.

1 As to City of London Police Commissioner see PARA 187 ante; and as to the City of London police see PARA 138 ante. As to the powers of the Metropolitan Police Commissioner see PARA 189 ante; and as to the powers and duties of chief officers of police generally see PARA 188 ante.

2 See the City of London Police Act 1839 s 22 (amended by the City of London (Various Powers) Act 1956 s 8(2)); and the City of London (Various Powers) Act 1956 s 8 (amended by the City of London (Various Powers) Act 1969 s 15). Before making such regulations the Commissioner must refer his proposals to the Court of Aldermen for consent unless this is impracticable, in which case the regulations must be reported to that court: City of London (Various Powers) Act 1956 s 8(4). As to the Court of Aldermen of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 47.

3 See the City of London Police Act 1839 ss 31, 32.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(3) CHIEF OFFICERS OF POLICE AND THEIR FUNCTIONS/(iii) General Functions of Chief Officers/191. Reports by chief constables to police authorities.

### **191. Reports by chief constables to police authorities.**

Every chief officer of police<sup>1</sup> of a police force<sup>2</sup> must, as soon as possible after the end of each financial year, submit to the police authority<sup>3</sup> a general report on the policing during that year of the area<sup>4</sup> for which his force is maintained<sup>5</sup>, and must arrange for the report to be published in such manner as appears to him to be appropriate<sup>6</sup>.

The chief officer of police of a police force, whenever so required by the police authority, must submit to that authority a report on such matters as may be specified in the requirement, being matters connected with the policing of the area for which the force is maintained<sup>7</sup>. The report must be in such form as the police authority may specify<sup>8</sup>. If it appears to the chief officer that such a report would contain information which in the public interest ought not to be disclosed, or is not needed for the discharge of the functions of the police authority<sup>9</sup>, he may request that authority to refer the requirement to submit the report to the Secretary of State<sup>10</sup>, and in any such case the requirement is of no effect unless it is confirmed by the Secretary of State<sup>11</sup>. The police authority may arrange, or require the chief officer to arrange, for the report to be published in such manner as appears to the authority to be appropriate<sup>12</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 For the meaning of 'police authority' see PARA 139 note 1 ante.

4 For the meaning of 'police area' see PARA 136 ante.

5 Police Act 1996 s 22(1) (amended by the Greater London Authority Act 1999 s 325, Sch 27 para 79(1), (2)). In its application to the metropolitan police force, the Police Act 1996 s 22 (as amended) has effect as if references to policing the metropolitan police district included references to the discharge by the metropolitan

police force of its national or international functions: s 96B(5) (s 96B added by the Greater London Authority Act 1999 Sch 27 para 104). As to the metropolitan police force and the metropolitan police district see PARA 137 ante. For the meaning of 'national or international functions' see PARA 205 post.

Every annual report under the Police Act 1996 s 22 (as amended) must contain information about the following matters in respect of the period to which the report relates: (1) the number of persons kept in police detention for more than 24 hours and subsequently released without charge; (2) the number of applications for warrants of further detention and the results of the applications; and (3) in relation to each warrant of further detention the period of further detention authorised by it, the period which the person named in it spent in police detention on its authority and whether he was charged or released without charge: Police and Criminal Evidence Act 1984 s 50(1), (2) (amended by the Police Act 1996 s 103, Sch 7 para 35). As to police detention see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 946 et seq.

6 Police Act 1996 s 22(2) (amended by the Greater London Authority Act 1999 Sch 27 para 79(1), (3)).

7 Police Act 1996 s 22(3) (amended by the Greater London Authority Act 1999 Sch 27 para 79(1), (4)).

8 Police Act 1996 s 22(4).

9 As to the functions of police authorities see PARA 156 et seq ante.

10 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 post.

11 Ibid s 22(5) (s 22(5), (6) amended by the Greater London Authority Act 1999 Sch 27 para 79(1), (5)).

12 Police Act 1996 s 22(6) (as amended: see note 11 supra).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(3) CHIEF OFFICERS OF POLICE AND THEIR FUNCTIONS/(iii) General Functions of Chief Officers/192. Functions in relation to personnel matters.

## **192. Functions in relation to personnel matters.**

Appointments and promotions to any rank below that of assistant chief constable<sup>1</sup> in any police force in England and Wales<sup>2</sup> must be made, in accordance with regulations<sup>3</sup>, by the chief constable<sup>4</sup>. In the metropolitan police force<sup>5</sup>, appointments and promotions to any rank below that of commander<sup>6</sup> must be made in accordance with such regulations by the Metropolitan Police Commissioner<sup>7</sup>.

A chief constable and the Metropolitan Police Commissioner also have functions relating to probationary service<sup>8</sup> and discipline<sup>9</sup>.

1 As to the appointment and removal of assistant chief constables see PARA 181 ante; and as to the appointment and removal of deputy chief constables see PARA 180 ante.

2 Ie any police force maintained under the Police Act 1996 s 2: see PARA 136 ante.

3 Ie regulations made under ibid s 50 (as amended): see PARAS 228, 232 et seq post.

4 Ibid s 13(3). As to chief constables see PARA 179 ante.

5 As to the metropolitan police force see PARA 137 ante.

6 As to the appointment of the deputy metropolitan police commissioner see PARA 184 ante; and as the appointment of assistant metropolitan police commissioners, deputy assistant metropolitan police commissioners and commanders see PARA 186 ante.

7 Police Act 1996 s 9H(3) (s 9H added by the Greater London Authority Act 1999 s 322). As to the Metropolitan Police Commissioner see PARA 183 ante.



8 See PARAS 234-235 post.

9 See PARA 245 et seq post.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(3) CHIEF OFFICERS OF POLICE AND THEIR FUNCTIONS/(iii) General Functions of Chief Officers/193. Provision of special police services.

### **193. Provision of special police services.**

At the request of any person<sup>1</sup>, the chief officer of police<sup>2</sup> of a police force<sup>3</sup> may provide special police services at any premises or in any locality in the police area<sup>4</sup> for which the force is maintained, subject to the payment to the police authority<sup>5</sup> of charges on such scales as may be determined by that authority<sup>6</sup>. The chief constable of the British Transport Police Force<sup>7</sup> may provide special police services at the request of any person, subject to the payment to the British Transport Police Authority<sup>8</sup> of charges on such scales as may be determined by that Authority<sup>9</sup>.

Special police services connote services outside the duty of a police force to provide sufficient protection for life and property without payment<sup>10</sup> and include, for example, a police presence on private property on the occasion of a wedding reception or sporting event where that presence is not required by a breach of the peace or anticipated breach of the peace, even when the arrangements for the attendance of police officers are made to guard against the possibility, or probability of violence<sup>11</sup>.

1 For the meaning of 'person' see PARA 110 note 6 ante.

2 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

3 For the meaning of 'police force' see PARA 102 note 11 ante.

4 For the meaning of 'police area' see PARA 136 ante.

5 For the meaning of 'police authority' see PARA 139 note 1 ante.

6 Police Act 1996 s 25(1). The key features of s 25(1) are: (1) there must be a request for special police services; (2) the chief officer has a discretion to provide them; and (3) if he agrees to do so, the police authority, in the absence of agreement, is entitled to fix the scale of charges. Before a liability to pay arises there will generally need to be agreement between the person requesting the services and the police as to what is being provided, subject to the fact that operational decisions as to how the police provide the services requested must ultimately always be a matter for them: *West Yorkshire Police Authority v Reading Festival Ltd* [2006] EWCA Civ 524, [2006] 1 WLR 2005, [2006] All ER (D) 40 (May).

7 As to the British Transport Police Force see PARA 129 ante.

8 As to the British Transport Police Authority see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 282.

9 Police Act 1996 s 25(1A) (added by the Anti-terrorism, Crime and Security Act 2001 s 101, Sch 7 paras 20, 23; and amended by the British Transport Police (Transitional and Consequential Provisions) Order 2004, SI 2004/1573, art 12(1)(c)).

10 See *Glasbrook Bros Ltd v Glamorgan County Council* [1925] AC 270, HL. See also PARA 526 post.

11 As to factors to be taken into account in deciding whether services are special police services see *Harris v Sheffield United Football Club Ltd* [1988] QB 77, [1987] 2 All ER 838, CA; *West Yorkshire Police Authority v Reading Festival Ltd* [2006] EWCA Civ 524, [2006] 1 WLR 2005, [2006] All ER (D) 40 (May).

### **UPDATE**

### 193 Provision of special police services

NOTE 6--Where the Secretary of State considers that the provision of special police services at a gas facility in England or Wales is necessary because of a risk of loss of or disruption to the supply of gas connected with it, and that the loss or disruption would have a serious impact on the United Kingdom or any part of it, the Secretary of State may require a designated gas transporter who has an interest in the gas facility to pay all or part of the costs incurred by the Secretary of State in respect of the provision of special police services in or around the facility: see the Counter-Terrorism Act 2008 ss 85, 87-90. As to the designation of a gas transporter, see the Counter-Terrorism Act 2008 (Designation of a Gas Transporter) Order 2009, SI 2009/2195.

*Reading Festival*, cited, applied: *Chief Constable of Greater Manchester Police v Wigan Athletic AFC Ltd* [2008] EWCA Civ 1449, [2009] 1 WLR 1580, [2008] All ER (D) 222 (Dec) (football club not liable to pay for level of policing higher than that requested).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(3) CHIEF OFFICERS OF POLICE AND THEIR FUNCTIONS/(iii) General Functions of Chief Officers/194. Civil protection.

#### 194. Civil protection.

A chief officer of police<sup>1</sup> and the chief constable of the British Transport Police Force<sup>2</sup> are among the persons or bodies<sup>3</sup> who must from time to time assess the risk of an emergency<sup>4</sup> occurring, assess the risk of an emergency making it necessary or expedient for him to perform any of his functions, and maintain plans for the purpose of ensuring, so far as is reasonably practicable, that if an emergency occurs he is able to continue to perform his functions and to take action in respect of the emergency<sup>5</sup>. Arrangements must be made for the publication of all or part of any such assessments and plans<sup>6</sup>; and arrangements must be maintained to warn the public, and to provide information and advice to the public, if an emergency is likely to occur or has occurred<sup>7</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 As to the British Transport Police Force see PARA 129 ante.

3 As to such persons and bodies see the Civil Contingencies Act 2004 s 2, Sch 1 Pts 1, 2; and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 542.

4 For the meaning of 'emergency' see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 540.

5 See the Civil Contingencies Act 2004 s 2(1)(a)-(e); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 544 et seq.

6 See *ibid* s 2(1)(f).

7 See *ibid* s 2(1)(g). As to civil protection generally see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 539 et seq.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/195. Statutory functions.

## **(4) FUNCTIONS OF THE SECRETARY OF STATE**

### **(i) In general**

#### **195. Statutory functions.**

The Secretary of State<sup>1</sup> must exercise his powers under the Police Act 1996<sup>2</sup> in such manner and to such extent as appears to him to be best calculated to promote the efficiency and effectiveness of the police<sup>3</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 The powers under the Police Act 1996 Pt I (ss 1-35), Pt II (ss 36-58), Pt III (ss 59-64) (other than ss 61 and 62 (see PARA 424 post)), s 85 and Sch 6 (see PARAS 300-304 post), and s 95 (see PARA 167 ante): s 36(2)(a)-(e).

3 Ibid s 36(1).

### **UPDATE**

#### **195 Statutory functions**

NOTE 2--Police Act 1996 s 36(2)(d) amended: Criminal Justice and Immigration Act 2008 Sch 22 para 2.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/196. Regulation of procedures and practices.

#### **196. Regulation of procedures and practices.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision requiring all police forces<sup>3</sup> in England and Wales<sup>4</sup> to adopt particular procedures or practices<sup>5</sup> or to adopt procedures or practices of a particular description<sup>6</sup>.

Before making any such regulations, the Secretary of State must seek advice<sup>7</sup> from the chief inspector of constabulary<sup>8</sup> and the National Policing Improvement Agency<sup>9</sup>. Before seeking such advice the Secretary of State must consult about his proposal to do so with the Association of Police Authorities<sup>10</sup> and the Association of Chief Police Officers<sup>11</sup>.

The Secretary of State must not make any such regulations requiring the adoption of any procedure or practice unless: (1) he has, as respects that procedure or practice, received advice from the National Policing Improvement Agency and has considered that advice<sup>12</sup>; (2) the advice of the chief inspector of constabulary states that that inspector is satisfied as to certain specified matters<sup>13</sup>; and (3) the Secretary of State himself is satisfied as to those matters<sup>14</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 The regulations may make different provision for different cases and circumstances: *ibid* s 53A(8) (s 53A added by the Police Reform Act 2002 s 7). The power of the Secretary of State to make such regulations is exercisable by statutory instrument: Police Act 1996 s 102. A statutory instrument containing the first

regulations to be made under s 53A (as added) must not be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House: s 53A(9) (as so added). A statutory instrument containing any other such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 53A(10) (as so added). At the date at which this volume states the law no such regulations had been made.

3 For the meaning of 'police force' see PARA 102 note 11 ante.

4 For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante.

5 Police Act 1996 s 53A(1)(a) (as added: see note 2 supra).

6 Ibid s 53A(1)(b) (as added: see note 2 supra). The Secretary of State is not under an obligation to make regulations to deal with all the many aspects of police work and its organisation. Where regulations are made chief officers of police may not issue orders that conflict with those regulations; but they may issue orders which supplement the regulations: see *Re Shields* [2003] UKHL 3, [2003] NI 161, [2003] All ER (D) 81 (Feb).

7 A request for these purposes may specify a period within which the requested advice is to be provided; and, if a period is so specified, the requested advice must be provided within it: Police Act 1996 s 53A(4) (as added: see note 2 supra).

8 Ibid s 53A(2)(a) (as added: see note 2 supra). As to the chief inspector of constabulary see PARA 206 post.

9 Ibid s 53A(2)(b) (s 53A as added (see note 2 supra); s 53A(2)(b) substituted by the Police and Justice Act 2006 s 1(3), Sch 1 paras 61, 63(1), (2)). Before giving any advice in response to a request, the National Policing Improvement Agency must consult with the Association of Police Authorities, the Association of Chief Police Officers, and such other persons as it thinks fit: Police Act 1996 s 53A(5) (as so added; and amended by the Police and Justice Act 2006 s 6(1), Sch 1 paras 61, 63(1), (3), Sch 4 para 6(1), (3)). As to the National Policing Improvement Agency see PARA 223 post. As to consultation with the Association of Police Authorities and the Association of Chief Police Officers see PARA 163 note 7 ante. As to the Association of Chief Police Officers see PARA 423 post. For the meaning of 'person' see PARA 110 note 6 ante.

10 Police Act 1996 s 53A(3)(a) (s 53A as added (see note 2 supra); s 53A(3)(a), (b) substituted by the Police and Justice Act 2006 Sch 4 para 6(1), (2)).

11 Police Act 1996 s 53A(3)(b) (as added and substituted: see notes 2, 10 supra).

12 Ibid s 53A(6)(a) (as added (see note 2 supra); and amended by the Police and Justice Act 2006 Sch 1 paras 61, 63(1), (3)).

13 Police Act 1996 s 53A(6)(b) (as added: see note 2 supra). The specified matters are: (1) that the adoption of that procedure or practice is necessary in order to facilitate the carrying out by members of any two or more police forces of joint or co-ordinated operations (s 53A(7)(a) (as so added)); (2) that the making of regulations is necessary for securing the adoption of that procedure or practice (s 53A(7)(b) (as so added)); and (3) that securing the adoption of that procedure or practice is in the national interest (s 53A(7)(c) (as so added)).

14 Ibid s 53A(6)(c) (as added: see note 2 supra). See also note 13 supra.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/197. Alteration of police areas.

### **197. Alteration of police areas.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> make alterations in police areas<sup>3</sup> in England and Wales other than the City of London police area<sup>4</sup>. The alterations that may be made by such an order include alterations that result in a reduction or an increase in the number of police areas, but not alterations that result in the abolition of the metropolitan police district<sup>5</sup>. The Secretary of State must not exercise his power to make alterations unless either: (1) he has received a request to make the alterations from the police authority for each of the areas affected by them<sup>6</sup>; or (2) it appears to him to be expedient to make the alterations in the interests of efficiency or effectiveness<sup>7</sup>. The Secretary of State must exercise his power to make such

orders in such a way as to ensure that none of the following areas, namely: (a) a county in which there are no district councils<sup>8</sup>; (b) a district in any other county<sup>9</sup>; (c) a county borough in Wales<sup>10</sup>; and (d) a London borough<sup>11</sup>, is divided between two or more police areas<sup>12</sup>.

Before making an order altering police areas in the interests of efficiency or effectiveness<sup>13</sup> the Secretary of State must give notice of his proposal to: (i) the police authority for every area he proposes to alter<sup>14</sup>; (ii) the council of every county, district, county borough or London borough wholly or partly within any area (other than the metropolitan police district) that he proposes to alter<sup>15</sup>; (iii) the Greater London Authority, if he proposes to alter the metropolitan police district<sup>16</sup>; (iv) the council of every London borough, county or district all or part of which would under the proposal be brought into or left out of the metropolitan police district<sup>17</sup>; and (v) such other persons<sup>18</sup> as he considers appropriate<sup>19</sup>. The notice must: (A) specify the proposed alterations and describe the general nature of any related provisions proposed to be included in the order<sup>20</sup>; (B) set out the Secretary of State's reasons for proposing the alterations<sup>21</sup>; and (C) specify a date before which any objections to the proposals are to be delivered to the Secretary of State<sup>22</sup>. Where objections have been duly delivered to the Secretary of State by a person notified under heads (i) to (v) above he must before making an order consider the objections<sup>23</sup> and give to that person a further notice stating whether he accepts the objections and, if he does not, giving his reasons<sup>24</sup>. Where the Secretary of State has given a notice specifying proposed alterations, the provisions of an order making the alterations may be inconsistent with the notice so far as it describes the general nature of the provisions, and may contain provisions not referred to in the notice<sup>25</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 The power of the Secretary of State to make such an order is exercisable by statutory instrument: Police Act 1996 s 102. The power to make orders under the Police Act 1996 s 32 (as amended) includes power to make such supplementary and transitional provision as the Secretary of State thinks necessary or expedient, including: (1) provision as to the membership of a police authority (s 34(1)(a)); (2) provision for the transfer of property, rights and liabilities (s 34(1)(b)); (3) provision for the transfer of members of police forces and other persons (s 34(1)(c)); (4) provision as to pending legal proceedings (s 34(1)(d)). Without prejudice to s 34(1), the power to make orders under s 32 (as amended) includes power: (a) to amend Sch 1 (as amended) (see PARA 136 ante) and the London Government Act 1963 s 76 (extent of metropolitan police district: see PARA 137 ante) (Police Act 1996 s 34(2)(a)); (b) to amend any other enactment, and any instrument made under any enactment, where the amendment is consequential on any provision of the order (s 34(2)(b)). At the date at which this volume states the law no such order had been made. For the meaning of 'police authority' see PARA 139 note 1 ante. As to membership of police authorities see PARA 140 et seq ante. For the meaning of 'police force' see PARA 102 note 11 ante. For the meaning of 'enactment' see PARA 102 note 5 ante.

3 For the meaning of 'police area' see PARA 136 ante.

4 Police Act 1996 s 32(1). For the meaning of 'City of London police area' see PARA 138 note 1 ante. As to the City of London police see PARA 138 ante.

5 Ibid s 32(2). As to the metropolitan police district see PARA 137 ante.

6 Ibid s 32(3)(a) (amended by the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 84(1), (2), Sch 34 Pt VII). A statutory instrument containing an order made under the Police Act 1996 s 32 (as amended) by virtue of s 32(3)(a) (as amended) is subject to annulment in pursuance of a resolution of either House of Parliament: s 34(5).

7 Ibid s 32(3)(b). No order may be made under s 32 (as amended) by virtue of s 32(3)(b) unless a draft of the order has been laid before and approved by resolution of each House of Parliament: s 34(3). An order to which s 34(3) applies, and which would apart from s 34(4) be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, must proceed in that House as if it were not such an instrument: s 34(4).

8 Ibid s 32(4)(a). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

9 Ibid s 32(4)(b).

- 10 Ibid s 32(4)(c).
- 11 Ibid s 32(4)(d). As to London boroughs see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30.
- 12 Ibid s 32(4).
- 13 Ie an order under ibid s 32 (as amended) by virtue of s 32(3)(b) (see the text to note 7 supra).
- 14 Ibid s 33(1)(a) (amended by the Greater London Authority Act 1999 Sch 27 para 85(1), (2), Sch 34 Pt VII).
- 15 Police Act 1996 s 33(1)(b).
- 16 Ibid s 33(1)(bb) (added by the Greater London Authority Act 1999 Sch 27 para 85(1), (3)). As to the Greater London Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 34, 79 et seq.
- 17 Police Act 1996 s 33(1)(c).
- 18 For the meaning of 'person' see PARA 110 note 6 ante.
- 19 Police Act 1996 s 33(1)(d).
- 20 Ibid s 33(2)(a).
- 21 Ibid s 33(2)(b).
- 22 Ibid s 33(2)(c). The date specified must fall after the end of the period of four months beginning with the date of the notice: s 33(3). For the meaning of 'month' see PARA 140 note 17 ante.
- 23 Ibid s 33(4)(a).
- 24 Ibid s 33(4)(b).
- 25 Ibid s 33(5).

## UPDATE

### 197 Alteration of police areas

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/198. Setting of strategic priorities for police authorities.

### 198. Setting of strategic priorities for police authorities.

The Secretary of State<sup>1</sup> may determine strategic priorities for the policing of the areas of all police authorities in England and Wales<sup>2</sup> and the Metropolitan Police Authority<sup>3</sup>. Before determining any such priorities the Secretary of State must consult<sup>4</sup> the Association of Police Authorities<sup>5</sup> and the Association of Chief Police Officers<sup>6</sup>. The Secretary of State must arrange for any priorities determined under these provisions to be published in such manner as he considers appropriate<sup>7</sup>.

The Secretary of State also has powers to confer particular functions on police authorities<sup>8</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 Ie those established under *ibid* s 3: see PARA 139 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.

3 *Ibid* s 37A(1), (4) (s 37A added by the Police and Justice Act 2006 s 2, Sch 2 para 25). As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

4 As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

5 Police Act 1996 s 37A(2)(a) (as added: see note 3 supra).

6 *Ibid* s 37A(2)(b) (as added: see note 3 supra). As to the Association of Chief Police Officers see PARA 423 post.

7 *Ibid* s 37A(3) (as added: see note 3 supra).

8 See *ibid* s 6ZA (as added); and PARA 158 ante.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/199. Setting of performance targets.

### **199. Setting of performance targets.**

Where the Secretary of State<sup>1</sup> has determined a strategic priority for police authorities<sup>2</sup>, he may direct them to establish levels of performance ('performance targets') to be aimed at in seeking to give effect to that priority<sup>3</sup>. Such a direction may be given to all police authorities<sup>4</sup> or to one or more particular authorities<sup>5</sup>. A direction may impose conditions with which the performance targets must conform, and different conditions may be imposed for different authorities<sup>6</sup>. A police authority that is given such a direction must comply with it<sup>7</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 Ie a strategic priority determined under *ibid* s 37A (as added): see PARA 198 ante. Section 37A (as added) applies to the police authorities established under s 3 (see PARA 139 ante) and the Metropolitan Police Authority: see s 37A(4) (as added); and PARA 198 ante. As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

3 *Ibid* s 38(1) (amended by the Police and Justice Act 2006 s 2, Sch 2 para 26(1), (2)). The Secretary of State must arrange for any such direction to be published in such manner as appears to him to be appropriate: Police Act 1996 s 38(4). In discharging its functions a police authority must have regard to any performance targets established by the authority, whether in accordance with such a direction or otherwise: see s 6(2)(c); and PARA 156 ante. A local policing plan must give particulars of any such performance targets: see s 8(2)(c); and PARA 162 ante.

4 Ie police authorities to which *ibid* s 37A (as added) (see PARA 198 ante) applies: s 38(2) (amended by the Greater London Authority Act 1999 s 325, Sch 27 para 87; and the Police and Justice Act 2006 Sch 2 para 26(1), (3)).

5 Police Act 1996 s 38(2).

6 *Ibid* s 38(3).

7 *Ibid* s 38(5) (added by the Police and Justice Act 2006 Sch 2 para 26(1), (4)).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/200. Codes of practice.

## **200. Codes of practice.**

The Secretary of State<sup>1</sup> may issue codes of practice relating to the discharge by police authorities in England and Wales<sup>2</sup> and the Metropolitan Police Authority<sup>3</sup> of any of their functions<sup>4</sup>. The Secretary of State may from time to time revise the whole or part of any such code of practice<sup>5</sup>, and he must lay before Parliament a copy of any code of practice, and of any revision of a code of practice, issued by him under this provision<sup>6</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 The police authorities established under *ibid* s 3: see PARA 139 ante.

3 As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

4 Police Act 1996 s 39(1) (amended by the Greater London Authority Act 1999 s 325, Sch 27 para 88). In discharging any functions to which a code of practice relates, any such police authority must have regard to the code: see the Police Act 1996 s 6(3), (5) (as added); and PARA 156 ante. As to the functions of police authorities see PARA 156 et seq ante.

5 *Ibid* s 39(2).

6 *Ibid* s 39(3).

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## **201. Codes of practice for chief officers.**

If the Secretary of State<sup>1</sup> considers it necessary to do so for the purpose of promoting the efficiency and effectiveness generally of the police forces<sup>2</sup> maintained for police areas<sup>3</sup> in England and Wales, he may issue codes of practice relating to the discharge of their functions by the chief officers of police<sup>4</sup> of those forces<sup>5</sup>. The Secretary of State may from time to time revise the whole or any part of a code of practice issued under these provisions<sup>6</sup>. In discharging any function to which a code of practice relates, a chief officer of police must have regard to the code<sup>7</sup>.

Where the Secretary of State proposes to issue or revise a code of practice, he must first require the National Policing Improvement Agency<sup>8</sup> to prepare a draft of the code or of the revisions; and the draft prepared by that Agency must contain all such matters as the Secretary of State may specify in the requirement<sup>9</sup>. Before preparing a draft code of practice or any draft revisions of such a code, the National Policing Improvement Agency must consult with<sup>10</sup> the Association of Police Authorities<sup>11</sup>, the Association of Chief Police Officers<sup>12</sup>, and such other persons as it thinks fit<sup>13</sup>.

The Secretary of State must lay any code of practice issued by him, and any revision of any such code, before Parliament<sup>14</sup>.



- 1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.
- 2 For the meaning of 'police force' see PARA 102 note 11 ante.
- 3 For the meaning of 'police area' see PARA 136 ante.
- 4 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.
- 5 Police Act 1996 s 39A(1) (s 39A added by the Police Reform Act 2002 s 2). As to the general functions of chief officers of police see PARA 188 ante.
- 6 Police Act 1996 s 39A(2) (as added: see note 5 supra).
- 7 Ibid s 39A(7) (as added: see note 5 supra).
- 8 As to the National Policing Improvement Agency see PARA 223 post.
- 9 Police Act 1996 s 39A(3) (s 39A as added (see note 5 supra); s 39A(3) amended by the Police and Justice Act 2006 s 1(3), Sch 1 paras 61, 62(1), (2)).
- 10 Police Act 1996 s 39A(4) (s 39A as added (see note 5 supra); s 39A(4) amended by the Police and Justice Act 2006 Sch 1 paras 61, 62(1), (3)).
- 11 Police Act 1996 s 39A(4)(a) (s 39A as added (see note 5 supra); s 39A(4)(a), (b) substituted by the Police and Justice Act 2006 s 6(1), Sch 4 para 3). As to consultation with the Association of Police Authorities see PARA 163 note 7 ante.
- 12 Police Act 1996 s 39A(4)(b) (as added and substituted: see notes 5, 11 supra). As to consultation with the Association of Chief Police Officers see PARA 163 note 7 ante. As to the Association of Chief Police Officers see PARA 423 post.
- 13 Ibid s 39A(4)(c) (as added: see note 5 supra). For the meaning of 'person' see PARA 110 note 6 ante.
- 14 Ibid s 39A(5) (as added: see note 5 supra). The Secretary of State is not required to lay before Parliament, or may exclude from what he does so lay, anything the publication of which, in his opinion: (1) would be against the interests of national security (s 39A(6)(a) (as so added)); (2) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders (s 39A(6)(b) (as so added)); or (3) could jeopardise the safety of any person (s 39A(6)(c) (as so added)).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/202. Inquiries.

## **202. Inquiries.**

Where a minister considers that particular events have caused, or are capable of causing, public concern, or there is public concern that particular events may have occurred, he may cause an inquiry to be held<sup>1</sup>. For such purposes he must appoint an inquiry panel<sup>2</sup>. An inquiry panel must not rule on, and has no power to determine, any person's civil or criminal liability, but any likelihood of liability being inferred from facts that it determines or recommendations that it makes does not inhibit it in the discharge of its functions<sup>3</sup>.

- 1 See the Inquiries Act 2005 s 1(1). Such an inquiry is to be held under the Inquiries Act 2005: see further ADMINISTRATIVE LAW.
- 2 See ibid s 4.
- 3 See ibid s 2.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/203. Reports from chief officers.

### **203. Reports from chief officers.**

The Secretary of State<sup>1</sup> may require a chief officer of police<sup>2</sup> of any police force<sup>3</sup> to submit to him a report on such matters as may be specified in the requirement<sup>4</sup>, being matters connected with the policing of the chief officer's police area<sup>5</sup>. The Secretary of State may arrange, or require the chief officer to arrange, for the report to be published in such manner as appears to the Secretary of State to be appropriate<sup>6</sup>. The chief officer of police of every police force must, as soon as possible after the end of each financial year, submit to the Secretary of State the like report as that which he must submit<sup>7</sup> to the police authority<sup>8</sup>.

The chief officer of police of every police force must, at such times and in such form as the Secretary of State may direct, transmit to the Secretary of State such particulars with respect to offences, offenders, criminal proceedings and the state of crime in the chief officer's police area as the Secretary of State may require<sup>9</sup>, and the Secretary of State must cause a consolidated and classified abstract of information so received to be prepared and laid before Parliament<sup>10</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

3 For the meaning of 'police force' see PARA 102 note 11 ante.

4 A requirement may specify the form in which a report is to be given: Police Act 1996 s 44(2).

5 Ibid s 44(1) (amended by the Greater London Authority Act 1999 s 325, Sch 27 para 91(1), (2)). For the meaning of 'police area' see PARA 136 ante. In its application to the metropolitan police force, the Police Act 1996 s 44 (as amended) has effect as if references to policing the metropolitan police district included references to the discharge by the metropolitan police force of its national or international functions: s 96B(5) (s 96B added by the Greater London Authority Act 1999 Sch 27 para 104). As to the metropolitan police force and the metropolitan police district see PARA 137 ante. For the meaning of 'national or international functions' see PARA 205 post.

6 Police Act 1996 s 44(3) (amended by the Greater London Authority Act 1999 Sch 27 para 91(1), (3)).

7 Ibid s 44(4) (amended by the Greater London Authority Act 1999 Sch 27 para 91(1), (4)). For the meaning of 'police authority' see PARA 139 note 1 ante.

8 Ibid s 44(4) (amended by the Greater London Authority Act 1999 Sch 27 para 91(1), (4)). For the meaning of 'police authority' see PARA 139 note 1 ante.

9 Police Act 1996 s 45(1).

10 Ibid s 45(2). As to reports to the Director of Public Prosecutions by chief officers of police see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1077.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/204. Reports from police authorities.

### **204. Reports from police authorities.**

A police authority<sup>1</sup> must, whenever so required by the Secretary of State<sup>2</sup>, submit to him a report on such matters connected with the discharge of the authority's functions<sup>3</sup>, or otherwise with the policing of its area<sup>4</sup>, as may be specified in the requirement<sup>5</sup>. Such a requirement may specify the form in which a report is to be given<sup>6</sup>. The Secretary of State may arrange, or require the police authority to arrange, for the report to be published in such manner as appears to him to be appropriate<sup>7</sup>.

1 For the meaning of 'police authority' see PARA 139 note 1 ante.

2 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

3 As to the functions of police authorities see PARA 156 et seq ante.

4 For the meaning of 'police area' see PARA 136 ante.

5 Police Act 1996 s 43(1).

6 Ibid s 43(2).

7 Ibid s 43(3).

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## **205. National and international functions of the metropolitan police.**

The Secretary of State<sup>1</sup> and the Metropolitan Police Authority<sup>2</sup> may enter into agreements with respect to the level of performance to be achieved by the metropolitan police force<sup>3</sup> in respect of any of its national or international functions<sup>4</sup>. 'National or international functions' means functions relating to: (1) the protection of prominent persons or their residences<sup>5</sup>; (2) national security<sup>6</sup>; (3) counter-terrorism<sup>7</sup>; or (4) the provision of services for any other national or international purpose<sup>8</sup>.

If the Secretary of State is of the opinion that the metropolitan police force is not performing any or all of its national or international functions to the standard specified in any such agreement then in force<sup>9</sup>, or if no agreement is in force in relation to the function or functions in question, to a standard which the Secretary of State considers to be satisfactory<sup>10</sup>, he may direct the Metropolitan Police Authority to take such measures as may be specified in the direction<sup>11</sup>. The Metropolitan Police Authority must comply with any such directions<sup>12</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

3 As to the metropolitan police force see PARA 137 ante.

4 Police Act 1996 s 96A(1) (s 96A added by the Greater London Authority Act 1999 s 325, Sch 27 para 104).

5 Police Act 1996 s 96A(4)(a) (as added: see note 4 supra).

6 Ibid s 96A(4)(b) (as added: see note 4 supra).

7 Ibid s 96A(4)(c) (as added: see note 4 supra).

- 8 Ibid s 96A(4)(d) (as added: see note 4 supra).
- 9 Ibid s 96A(2)(a) (as added: see note 4 supra).
- 10 Ibid s 96A(2)(b) (as added: see note 4 supra).
- 11 Ibid s 96A(2) (as added: see note 4 supra).
- 12 Ibid s 96A(3) (as added: see note 4 supra).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/206. Inspectors of constabulary.

## **206. Inspectors of constabulary.**

Her Majesty may appoint such number of inspectors, known as 'Her Majesty's Inspectors of Constabulary', as the Secretary of State<sup>1</sup> may with the consent of the Treasury<sup>2</sup> determine, and of the persons so appointed one may be appointed as chief inspector of constabulary<sup>3</sup>.

The inspectors of constabulary must inspect, and report<sup>4</sup> to the Secretary of State on the efficiency and effectiveness of, every police force maintained for a police area<sup>5</sup>. The inspectors of constabulary may inspect, and report to the Secretary of State on, a police authority's compliance with the requirements<sup>6</sup> relating to best value<sup>7</sup>. The Secretary of State may at any time require the inspectors of constabulary to carry out an inspection of a police force maintained for any police area; and such a requirement may include a requirement for the inspection to be confined to a particular part of the force in question, to particular matters or to particular activities of that force<sup>8</sup>. The inspectors of constabulary must carry out such other duties for the purpose of furthering police efficiency and effectiveness as the Secretary of State may from time to time direct<sup>9</sup>.

It is the duty of the chief inspector of constabulary: (1) to enter into arrangements with the Independent Police Complaints Commission<sup>10</sup> for the purpose of securing co-operation, in the carrying out of their respective functions, between the inspectors of constabulary and that Commission<sup>11</sup>; and (2) to ensure that inspectors of constabulary provide that Commission with all such assistance and co-operation as may be required by those arrangements or as otherwise appears to the chief inspector to be appropriate for facilitating the carrying out by that Commission of its functions<sup>12</sup>.

The chief inspector of constabulary must in each year submit to the Secretary of State a report in such form as the Secretary of State may direct, and the Secretary of State must lay a copy of that report before Parliament<sup>13</sup>.

The Secretary of State must arrange for any inspection report received by him<sup>14</sup> to be published in such manner as appears to him to be appropriate<sup>15</sup>. He may exclude from such publication any part of a report if, in his opinion, the publication of that part would be against the interests of national security<sup>16</sup> or might jeopardise the safety of any person<sup>17</sup>. The Secretary of State must send a copy of the published report to the police authority maintaining the police force to which the report relates<sup>18</sup> and to the chief officer of police<sup>19</sup> of that police force<sup>20</sup>. The police authority must invite the chief officer of police to submit comments on the published report to it before such date as it may specify<sup>21</sup>. The police authority must prepare comments on the published report and arrange for its comments<sup>22</sup>, any comments submitted by the chief officer of police<sup>23</sup>, and any response which the authority has to the comments submitted by him<sup>24</sup>, to be published in such manner as appears to it to be appropriate<sup>25</sup>. The police authority must send a copy of any document so published to the Secretary of State<sup>26</sup>.

- 1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.
- 2 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.
- 3 Police Act 1996 s 54(1). The inspectors of constabulary are paid such salary and allowances as the Secretary of State may with the consent of the Treasury determine: s 54(5). The Secretary of State may appoint assistant inspectors of constabulary for the purpose of carrying out functions under the Revenue and Customs (Inspections) Regulations 2005, SI 2005/1133 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 929): Police Act 1996 s 56(1) (amended by the Revenue and Customs (Inspections) Regulations 2005, SI 2005/1133, reg 10(1)(a)). Officers of revenue and customs may be appointed by the Secretary of State to be assistant inspectors of constabulary or to be staff officers to the inspectors of constabulary: Police Act 1996 s 56(2) (amended by the Revenue and Customs (Inspections) Regulations 2005, SI 2005/1133, reg 10(1)(b)). Persons so appointed are paid such salary and allowances as the Secretary of State may with the consent of the Treasury determine: Police Act 1996 s 56(3). As to officers of revenue and customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARAS 901, 903. As to the delegation by the Secretary of State of certain of his functions to the chief inspector of constabulary see PARA 208 post.
- 4 Where a report contains recommendations in the case of any police force for the taking of measures relating to the provision of training, or the provision of opportunities for professional development, the Secretary of State may direct the police authority responsible for maintaining that force to take such measures relating to those matters as may be specified in the direction: see the Criminal Justice and Police Act 2001 s 98(1); and PARA 214 post. A police authority must comply with any such direction given to it: s 98(2). For the meaning of 'police force' see PARA 102 note 11 ante; and for the meaning of 'police authority' see PARA 139 note 1 ante. As to police training generally see PARAS 243-244 post. As to the powers of the Secretary of State to give directions in relation to a police force and in relation to a police authority see PARAS 211-213 post.
- 5 See the Police Act 1996 s 54(2) (amended by the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 68, 71(1), (2), Sch 17 Pt 2). For the meaning of 'police area' see PARA 136 ante. As to the duty of police authorities to maintain an efficient and effective police force for their areas see the Police Act 1996 s 6 (as amended); and PARA 156 ante. The inspectors of constabulary are also responsible for the inspection of the Ministry of Defence Police (see the Ministry of Defence Police Act 1987 s 4B (as added); and PARA 122 ante) and the Serious Organised Crime Agency (see the Serious Organised Crime and Police Act 2005 s 16; and PARA 453 post). The Secretary of State may require the chief inspector of constabulary to inspect the National Policing Improvement Agency: see the Police and Justice Act 2006 s 1(3), Sch 1 para 30; and PARA 226 post.
- 6 See the requirements of the Local Government Act 1999 Pt I (ss 1-29) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 688 et seq.
- 7 Police Act 1996 s 54(2A) (added by the Local Government Act 1999 s 24(2)).
- 8 Police Act 1996 s 54(2B) (s 54(2B), (2C) added by the Police Reform Act 2002 s 3(1); Police Act 1996 s 54(2B) substituted by the Serious Organised Crime and Police Act 2005 Sch 4 paras 68, 71(1), (3)). Where the inspectors carry out an inspection under the Police Act 1996 s 54(2B) (as added and substituted), they must send a report on that inspection to the Secretary of State: s 54(2C) (as so added). See also note 4 supra.
- 9 Ibid s 54(3).
- 10 As to the Independent Police Complaints Commission see PARA 316 et seq post.
- 11 Police Act 1996 s 54(2D)(a) (s 54(2D) added by the Police Reform Act 2002 Sch 7 para 15).
- 12 Police Act 1996 s 54(2D)(b) (as added: see note 11 supra). There is an equivalent duty on the Independent Police Complaints Commission: see the Police Reform Act 2002 s 10(5); and PARA 327 post.
- 13 Police Act 1996 s 54(4).
- 14 See under ibid s 54(2) (as amended) (see the text to notes 4-5 supra), s 54(2A) (as added) (see the text to notes 6-7 supra) or s 54(2C) (as added) (see the text to note 8 supra).
- 15 Ibid s 55(1) (amended by the Police Reform Act 2002 s 3(1)).
- 16 Police Act 1996 s 55(2)(a).
- 17 Ibid s 55(2)(b).

- 18 Ibid s 55(3)(a) (amended by the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 96, Sch 34 Pt VII).
- 19 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.
- 20 Police Act 1996 s 55(3)(b).
- 21 Ibid s 55(4).
- 22 Ibid s 55(5)(a).
- 23 Ibid s 55(5)(b).
- 24 Ibid s 55(5)(c).
- 25 Ibid s 55(5).
- 26 Ibid s 55(6) (amended by virtue of the Greater London Authority Act 1999 Sch 27 para 96, Sch 34 Pt VII).

## **UPDATE**

### **206 Inspectors of constabulary**

NOTE 3--The Secretary of State may make regulations conferring functions on Her Majesty's Inspectors of Constabulary in relation to (1) designated customs officials and officials of the Secretary of State exercising customs functions; (2) immigration officers and officials of the Secretary of State exercising functions relating to immigration, asylum or nationality; (3) the Secretary of State in so far as he has general customs functions; (4) the Secretary of State in so far as he has functions relating to immigration, asylum or nationality; (5) the Director of Border Revenue and any person exercising functions of the Director; and (6) anyone providing services relating to the discharge of functions of the persons mentioned in heads (1)-(5): see Borders, Citizenship and Immigration Act 2009 s 29; and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 140C.

NOTE 5--Police Act 1996 s 54(2) further amended: Criminal Justice and Immigration Act 2008 Sch 28 Pt 8.

TEXT AND NOTE 7--Police Act 1996 s 54(2A) substituted: Criminal Justice and Immigration Act 2008 s 129.

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### **207. Inspections by inspectors of constabulary.**

The chief inspector of constabulary<sup>1</sup> must from time to time, or at such times as the Secretary of State<sup>2</sup> may specify by order<sup>3</sup>, prepare an inspection programme setting out what inspections he proposes to carry out, and an inspection framework setting out the manner in which he proposes to carry out his functions of inspecting and reporting<sup>4</sup>. Before preparing an inspection programme or an inspection framework, the chief inspector of constabulary must consult the Secretary of State and other specified persons or bodies<sup>5</sup>. The inspectors of constabulary must co-operate with those other persons or bodies<sup>6</sup> where it is appropriate to do so for the efficient and effective discharge of the functions of the inspectors of constabulary<sup>7</sup>. The inspectors of constabulary may act jointly with another public authority<sup>8</sup> where it is appropriate to do so for

the efficient and effective discharge of their functions<sup>9</sup>. The chief inspector of constabulary may, if he thinks it appropriate to do so, provide assistance to any other public authority for the purpose of the exercise by that authority of its functions<sup>10</sup>.

If a nominated person or body<sup>11</sup> is proposing to carry out an inspection that would involve inspecting a specified organisation<sup>12</sup>, and the chief inspector of constabulary considers that the proposed inspection would impose an unreasonable burden on that organisation, or would do so if carried out in a particular manner<sup>13</sup>, the chief inspector of constabulary must give a notice to that person or body not to carry out the proposed inspection, or not to carry it out in that manner<sup>14</sup>. Where such a notice is given, the proposed inspection is not to be carried out, or (as the case may be) is not to be carried out in the manner mentioned in the notice<sup>15</sup>.

An inspector of constabulary may delegate any of his functions (to such extent as he may determine) to another public authority<sup>16</sup>.

1 As to the appointment of the chief inspector of constabulary and as to the inspectors of constabulary generally see PARA 206 ante.

2 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

3 The power of the Secretary of State to make orders is exercisable by statutory instrument: *ibid* s 102. A statutory instrument containing an order under Sch 4A (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 54(6), Sch 4A para 7 (s 54(6), Sch 4A both added by the Police and Justice Act 2006 s 29).

4 Police Act 1996 Sch 4A para 2(1) (as added: see note 3 supra). Nothing in any inspection programme or inspection framework is to be read as preventing the inspectors of constabulary from making visits without notice: Sch 4A para 2(5) (as so added). The Secretary of State may by order specify the form that inspection programmes or inspection frameworks are to take: Sch 4A para 2(4) (as so added). As to the making of orders see note 3 supra. At the date at which this volume states the law no such order had been made.

5 See *ibid* Sch 4A para 2(2) (as added: see note 3 supra). The other persons or bodies are: (1) Her Majesty's Chief Inspector of Prisons (see PRISONS vol 36(2) (Reissue) PARA 508); (2) Her Majesty's Chief Inspector of the Crown Prosecution Service (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1069); (3) Her Majesty's Chief Inspector of the National Probation Service for England and Wales (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 755); (4) Her Majesty's Chief Inspector of Court Administration (see COURTS); (5) Her Majesty's Chief Inspector of Education, Children's Services and Skills (see EDUCATION); (6) the Commission for Healthcare Audit and Inspection (see SOCIAL SERVICES AND COMMUNITY CARE); (7) the Commission for Social Care Inspection (see SOCIAL SERVICES AND COMMUNITY CARE); (8) the Audit Commission for Local Government and the National Health Service in England and Wales (see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq); (9) the Auditor General for Wales (see CONSTITUTIONAL LAW AND HUMAN RIGHTS); and (10) any other person or body specified by an order made by the Secretary of State: Sch 4A para 2(2) (as so added). The chief inspector of constabulary must send to each of those persons or bodies a copy of each programme or framework once it is prepared: Sch 4A para 2(2) (as so added). The requirement to consult, and to send copies to any of those persons or bodies is subject to any agreement made between the chief inspector and that person or body to waive the requirement in such cases or circumstances as may be specified in the agreement: Sch 4A para 2(3) (as so added).

6 The persons or bodies are the same as those set out in note 5 heads (1)-(9) supra: see *ibid* Sch 4A para 4 (as added: see note 3 supra).

7 *Ibid* Sch 4A para 4 (as added: see note 3 supra).

8 'Public authority' includes any person certain of whose functions are functions of a public nature: *ibid* Sch 4A para 1(3) (as added: see note 3 supra). For the meaning of 'person' see PARA 110 note 6 ante.

9 *Ibid* Sch 4A para 5(1) (as added: see note 3 supra). The chief inspector of constabulary, acting jointly with Her Majesty's Chief Inspector of Prisons, Her Majesty's Chief Inspector of the Crown Prosecution Service, Her Majesty's Chief Inspector of the National Probation Service for England and Wales, and Her Majesty's Chief Inspector of Court Administration must prepare a joint inspection programme setting out: (1) what inspections the inspectors of constabulary propose to carry out in the exercise of the power conferred by Sch 4A para 5(1) (as added); and (2) what inspections those other chief inspectors (or their inspectorates) propose to carry out in the exercise of any corresponding powers conferred on them: Sch 4A para 5(2), (3) (as so added). A joint inspection programme must be prepared from time to time or at such times as the Secretary of State, the Lord

Chancellor and the Attorney General may jointly direct: Sch 4A para 5(4) (as so added). The provisions of Sch 4A para 2(2), (3), (5) (as added) (see the text and notes 4, 5 supra) apply to a joint inspection programme as they apply to a document prepared under those provisions: Sch 4A para 5(5) (as so added). The Secretary of State, the Lord Chancellor and the Attorney General may by a joint direction specify the form that a joint inspection programme is to take: Sch 4A para 5(6) (as so added). As to the Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

10 Ibid Sch 4A para 6(1) (as added: see note 3 supra). Such assistance may be provided on such terms (including terms as to payment) as the chief inspector of constabulary thinks fit: Sch 4A para 6(2) (as so added).

11 The nominated persons or bodies are Her Majesty's Chief Inspector of Prisons, Her Majesty's Chief Inspector of the Crown Prosecution Service, Her Majesty's Inspectorate of the National Probation Service for England and Wales, the Commission for Healthcare Audit and Inspection, and the Audit Commission for Local Government and the National Health Service in England and Wales: ibid Sch 4A para 3(2) (as added: see note 3 supra). The Secretary of State may by order amend Sch 4A para 3(2) (as added): Sch 4A para 3(3) (as so added). As to the making of orders see note 3 supra. At the date at which this volume states the law no such order had been made.

12 Ibid Sch 4A para 3(1)(a) (as added: see note 3 supra). 'Specified organisation' means a person or body specified by an order made by the Secretary of State: Sch 4A para 3(4) (as so added). A person or body may be so specified only if it exercises functions in relation to any matter falling within the scope of the duties of the inspectors of constabulary under s 54 (see PARA 206 ante) or any other enactment: Sch 4A para 3(5) (as so added). A person or body may be so specified in relation to particular functions that it has; and in the case of such a person or body, Sch 4A para 3(1)(a) (as added) is to be read as referring to an inspection that would involve inspecting the discharge of any of its functions in relation to which it is specified: Sch 4A para 3(6) (as so added). As to the making of orders see note 3 supra. For the meaning of 'enactment' see PARA 102 note 5 ante. The following bodies are specified organisations: a police force, a police authority, the Serious Organised Crime Agency, the National Policing Improvement Agency, the Ministry of Defence Police, the British Transport Police Force, and the Civil Nuclear Constabulary: see the Her Majesty's Inspectors of Constabulary (Specified Organisations) Order 2007, SI 2007/1170, art 2. For the meaning of 'police force' see PARA 102 note 11 ante. For the meaning of 'police authority' see PARA 139 note 1 ante. As to the Serious Organised Crime Agency see PARA 430 et seq post. As to the National Policing Improvement Agency see PARA 223 et seq post. As to the Ministry of Defence Police see PARA 120 et seq ante. As to the British Transport Police Force see PARA 129 ante. As to the Civil Nuclear Constabulary see PARA 128 ante.

13 Police Act 1996 Sch 4A para 3(1)(b) (as added: see note 3 supra).

14 Ibid Sch 4A para 3(1) (as added: see note 3 supra). The Secretary of State may by order specify cases or circumstances in which a notice need not, or may not, be given: Sch 4A para 3(7) (as so added). The Secretary of State may by order make provision supplementing that made by Sch 4A para 3 (as added), including in particular: (1) provision about the form of notices; (2) provision prescribing the period within which notices are to be given; (3) provision prescribing circumstances in which notices are, or are not, to be made public; (4) provision for revising or withdrawing notices; (5) provision for setting aside notices not validly given: Sch 4A para 3(10) (as so added). As to the making of orders see note 3 supra. At the date at which this volume states the law no such order had been made.

15 Ibid Sch 4A para 3(8) (as added: see note 3 supra). However, the Secretary of State, if satisfied that the proposed inspection would not impose an unreasonable burden on the organisation in question, or would not do so if carried out in a particular manner, may give consent to the inspection being carried out, or being carried out in that manner: Sch 4A para 3(9) (as so added).

16 See ibid Sch 4A para 1(1), (2) (as added: see note 3 supra).

## UPDATE

### 207 Inspections by inspectors of constabulary

TEXT AND NOTES--1996 Act Sch 4A amended: Local Government and Public Involvement in Health Act 2007 Sch 9 para 1(2)(j), Sch 18 Pt 9; Health and Social Care Act 2008 Sch 5 para 63, Sch 15 Pt 1; SI 2008/912.



Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/208. Delegation to chief inspector of constabulary.

## **208. Delegation to chief inspector of constabulary.**

The Secretary of State<sup>1</sup> may delegate to the chief inspector of constabulary<sup>2</sup> any or all of the following functions:

- 35 (1) his functions<sup>3</sup> with respect to the approval required for the appointment of an assistant metropolitan police commissioner, of a deputy assistant metropolitan police commissioner or of a commander in the metropolitan police force<sup>4</sup>;
- 36 (2) his functions<sup>5</sup> with respect to the approval required for the appointment of the chief constable of a police force<sup>6</sup>, of the deputy chief constable of a police force or of an assistant chief constable of a police force<sup>7</sup>;
- 37 (3) his functions<sup>8</sup> with respect to the consent required for a deputy chief constable to exercise or perform any powers or duties of a chief constable for a continuous period exceeding three months<sup>9</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 As to the chief inspector of constabulary see PARA 206 ante.

3 I.e. by virtue of the Police Act 1996 ss 9F(2), 9FA(2), 9G(2) (all as added): see PARA 186 ante.

4 Ibid s 54(3A)(a) (s 54(3A) added by the Police Reform Act 2002 s 84). As to the metropolitan police force see PARA 137 ante.

5 I.e. by virtue of the Police Act 1996 s 11(1) (see PARA 179 ante), s 11A(2) (as added) (see PARA 180 ante), s 12(2) (see PARA 181 ante).

6 For the meaning of 'police force' see PARA 102 note 11 ante.

7 Police Act 1996 s 54(3A)(b) (as added: see note 4 supra).

8 I.e. by virtue of ibid s 12A(4) (as added): see PARA 178 ante.

9 Ibid s 54(3A)(c) (as added: see note 4 supra). For the meaning of 'month' see PARA 140 note 17 ante.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/209. Power to give directions as to minimum budget.

## **209. Power to give directions as to minimum budget.**

The power of the Secretary of State<sup>1</sup> to give directions<sup>2</sup> to a police authority<sup>3</sup> includes power to direct the authority that the amount of its budget requirement for any financial year<sup>4</sup> is not to be less than an amount specified in the direction<sup>5</sup>. Such a direction must not be given in relation to a financial year at any time after the end of the preceding December<sup>6</sup>. Where the Secretary of State gives such a direction to a police authority, any precept issued or calculation made by the authority<sup>7</sup> which is inconsistent with the direction is void<sup>8</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 le under the Police Act 1996 s 40 (as substituted) (see PARA 211 post) or s 40A (as added) (see PARA 212 post).

3 le a police authority established under *ibid* s 3: see PARA 139 ante.

4 le under the Local Government Finance Act 1992 s 43 (as amended): see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 525.

5 Police Act 1996 s 41(1) (amended by the Police and Justice Act 2006 s 2, Sch 2 para 28). The power exercisable by virtue of the Police Act 1996 s 41(1) (as amended), and any direction given under that power, are subject to any limitation imposed under the Local Government Finance Act 1992 Pt I Ch IVA (ss 52A-52Z) (as added) (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 528); Police Act 1996 s 41(2) (amended by the Local Government Act 1999 s 30, Sch 1 para 10).

6 Police Act 1996 s 41(3).

7 le under the Local Government Finance Act 1992 Pt I (ss 1-69) (as amended): see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 524.

8 Police Act 1996 s 41(4).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/210. Provision of common services.

## **210. Provision of common services.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision requiring all police forces<sup>3</sup> in England and Wales to use specified facilities and services, or facilities or services of a specified description<sup>4</sup>, if he considers that it would be in the interests of the efficiency or effectiveness of the police for them to do so<sup>5</sup>. Before making any such regulations the Secretary of State must consult<sup>6</sup>: (1) the Association of Police Authorities<sup>7</sup>; (2) the Association of Chief Police Officers<sup>8</sup>; and, (3) if the regulations relate to the Serious Organised Crime Agency, that Agency<sup>9</sup>. The Secretary of State must consult the National Policing Improvement Agency<sup>10</sup> before making such regulations relating to information technology<sup>11</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 The power of the Secretary of State to make such regulations is exercisable by statutory instrument: *ibid* s 102. At the date at which this volume states the law no such regulations had been made.

3 For the meaning of 'police force' see PARA 102 note 11 ante.

4 le whether or not provided under the Police Act 1996 s 57(1): see PARA 215 post.

5 *Ibid* s 57(3). Such regulations relating to all police forces may also require the Serious Organised Crime Agency to use the specified facilities or services, or the facilities or services of a specified description, if the Secretary of State considers that it would be in the interests of the efficiency or effectiveness of the Agency for the Agency to do so: s 57(3A) (added by the Police Act 1997 s 134(1), Sch 9 para 78(2); and amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 68, 73(1), (2)(a), (b)). As to the Serious Organised Crime Agency see PARA 430 et seq post.

6 As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

7 Police Act 1996 s 57(4)(a) (s 57(4)(a), (b) substituted by the Police and Justice Act 2006 s 6(1), Sch 4 para 7). As to consultation with the Association of Police Authorities see PARA 163 note 7 ante.

8 Police Act 1996 s 57(4)(b) (as substituted: see note 7 supra). As to consultation with the Association of Chief Police Officers see PARA 163 note 7 ante. As to the Association of Chief Police Officers see PARA 423 post.

9 Ibid s 57(4)(c) (added by the Police Act 1997 Sch 9 paras 72, 78(3); and substituted by the Serious Organised Crime and Police Act 2005 Sch 4 paras 68, 73(1), (3)).

10 As to the National Policing Improvement Agency see PARA 223 post.

11 Police Act 1996 s 57(5) (s 57(5), (6) added by the Police Act 1997 Sch 9 paras 72, 78(4); Police Act 1996 s 57(5) amended by the Police and Justice Act 2006 s 1(3), Sch 1 paras 61, 64). 'Information technology' includes any computer or other technology by means of which information or other matter may be recorded or communicated without being reduced to documentary form: Police Act 1996 s 57(6) (as so added).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/211. Power to give directions in relation to a police force.

### **211. Power to give directions in relation to a police force.**

Where the Secretary of State<sup>1</sup> is satisfied that the whole or any part of a police force<sup>2</sup> is failing to discharge any of its functions in an effective manner, whether generally or in particular respects, he may direct the police authority<sup>3</sup> responsible for maintaining the force to take specified measures for the purpose of remedying the failure<sup>4</sup>. Where the Secretary of State is satisfied that the whole or a part of a police force will fail to discharge any of its functions in an effective manner, whether generally or in particular respects, unless remedial measures are taken, he may direct the police authority responsible for maintaining the force to take specified measures in order to prevent such a failure occurring<sup>5</sup>. The measures that may be specified in a direction<sup>6</sup> include the submission to the Secretary of State of an action plan setting out the measures which the person<sup>7</sup> or persons submitting the plan propose to take for the purpose of remedying the failure in question or (as the case may be) preventing such a failure occurring<sup>8</sup>.

The Secretary of State must not give a direction in relation to any police force unless: (1) the police authority responsible for maintaining the force and the chief officer of police<sup>9</sup> of that force have each been given such information about the Secretary of State's grounds for proposing to give that direction as he considers appropriate for enabling them to make representations or proposals under heads (2) and (3) below<sup>10</sup>; (2) that police authority and chief officer have each been given an opportunity of making representations about those grounds<sup>11</sup>; (3) that police authority and chief officer have each had an opportunity of making proposals for the taking of remedial measures that would make the giving of the direction unnecessary<sup>12</sup>; and (4) the Secretary of State has considered any such representations and any such proposals<sup>13</sup>. However, this provision<sup>14</sup> does not apply if the Secretary of State is satisfied that: (a) the police authority responsible for maintaining the force and the chief officer of police of that force have already been made aware of the matters constituting the Secretary of State's grounds for proposing to give a direction<sup>15</sup>; (b) the information they had about those matters was sufficient to enable them to identify remedial measures that would have made the giving of the direction unnecessary<sup>16</sup>; and (c) they have each had a reasonable opportunity to take such measures<sup>17</sup>.

The Secretary of State must not give a direction unless the chief inspector of constabulary<sup>18</sup> has been given the same information about the grounds for proposing to give that direction as is required to be given under head (1) above (or would be so required but for heads (a) to (c) above)<sup>19</sup>, and an opportunity of making written observations about those grounds<sup>20</sup>. The Secretary of State must publish any such observations in such manner as appears to him to be appropriate<sup>21</sup>.

A police authority that is given a direction must comply with it<sup>22</sup>.

The Secretary of State may exercise (whether in relation to the same matter or different matters or at the same time or at different times) both his powers under the above provisions and his powers<sup>23</sup> to give directions in relation to a police authority<sup>24</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 For the meaning of 'police authority' see PARA 139 note 1 ante.

4 Police Act 1996 s 40(1) (s 40 substituted, and s 40A added, by the Police and Justice Act 2006 s 2, Sch 2 para 27). As to the procedure for giving directions under the Police Act 1996 s 40 (as substituted) see PARA 213 post. As to the duty of police authorities to maintain an efficient and effective police force for their areas see s 6 (as amended); and PARA 156 ante. If a police authority is failing to secure best value (ie continuous improvements in efficiency, effectiveness or economy), the Secretary of State may direct the authority to undertake a best value review of that function, set up a local inquiry into the force, take over the running of that function, or appoint someone else to take over that function: see the Local Government Act 1999 ss 1(1) (d), 3, 5, 15; and LOCAL GOVERNMENT vol 69 (2009) PARA 688 et seq.

5 Police Act 1996 s 40(2) (as substituted: see note 4 supra).

6 Ie a direction under ibid s 40(1) or (2) (as substituted): see the text to notes 2-5 supra.

7 For the meaning of 'person' see PARA 110 note 6 ante.

8 Police Act 1996 s 40(3) (as substituted: see note 4 supra).

9 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

10 Police Act 1996 s 40(4)(a) (as substituted: see note 4 supra).

11 Ibid s 40(4)(b) (as substituted: see note 4 supra).

12 Ibid s 40(4)(c) (as substituted: see note 4 supra).

13 Ibid s 40(4)(d) (as substituted: see note 4 supra).

14 Ie ibid s 40(4) (as substituted): see the text to notes 9-13 supra.

15 Ibid s 40(5)(a) (as substituted: see note 4 supra).

16 Ibid s 40(5)(b) (as substituted: see note 4 supra).

17 Ibid s 40(5)(c) (as substituted: see note 4 supra).

18 As to the chief inspector of constabulary see PARA 206 ante.

19 Police Act 1996 s 40(6)(a) (as substituted: see note 4 supra).

20 Ibid s 40(6)(b) (as substituted: see note 4 supra). For the meaning of 'written' see PARA 115 note 9 ante.

21 Ibid s 40(6) (as substituted: see note 4 supra).

22 Ibid s 40(7) (as substituted: see note 4 supra).

23 Ie his powers under ibid s 40A (as added): see PARA 212 post.

24 See ibid s 40A(8) (as added: see note 4 supra).

## 212. Power to give directions in relation to a police authority.

Where the Secretary of State<sup>1</sup> is satisfied that a police authority<sup>2</sup> is failing to discharge any of its functions in an effective manner, whether generally or in particular respects, he may direct the police authority to take specified measures for the purpose of remedying the failure<sup>3</sup>.

Where the Secretary of State is satisfied that a police authority will fail to discharge any of its functions in an effective manner, whether generally or in particular respects, unless remedial measures are taken, he may direct the police authority to take specified measures in order to prevent such a failure occurring<sup>4</sup>. The measures that may be specified in a direction include the submission to the Secretary of State of an action plan setting out the measures which the authority submitting the plan proposes to take for the purpose of remedying the failure in question or (as the case may be) preventing such a failure occurring<sup>5</sup>.

The Secretary of State must not give a direction in relation to a police authority unless: (1) the police authority has been given such information about the Secretary of State's grounds for proposing to give that direction as he considers appropriate for enabling it to make representations or proposals under heads (2) and (3) below<sup>6</sup>; (2) the police authority has been given an opportunity of making representations about those grounds<sup>7</sup>; (3) the police authority has had an opportunity of making proposals for the taking of remedial measures that would make the giving of the direction unnecessary<sup>8</sup>; and (4) the Secretary of State has considered any such representations and any such proposals<sup>9</sup>. However, this provision<sup>10</sup> does not apply if the Secretary of State is satisfied that: (a) the police authority has already been made aware of the matters constituting the Secretary of State's grounds for proposing to give a direction<sup>11</sup>; (b) the information the authority had about those matters was sufficient to enable it to identify remedial measures that would have made the giving of the direction unnecessary<sup>12</sup>; and (c) the authority has had a reasonable opportunity to take such measures<sup>13</sup>.

The Secretary of State must not give a direction unless the chief inspector of constabulary<sup>14</sup> has been given the same information about the grounds for proposing to give that direction as is required to be given under head (1) above (or would be so required but for heads (a) to (c) above)<sup>15</sup>, and an opportunity of making written observations about those grounds<sup>16</sup>. The Secretary of State must publish any such observations in such manner as appears to him to be appropriate<sup>17</sup>.

A police authority that is given a direction must comply with it<sup>18</sup>.

The Secretary of State may exercise (whether in relation to the same matter or different matters or at the same time or at different times) both his powers under the above provisions and his powers<sup>19</sup> to give directions in relation to a police force<sup>20</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 For the meaning of 'police authority' see PARA 139 note 1 ante. As to the functions of police authorities see PARA 156 et seq ante.

3 Police Act 1996 s 40A(1) (s 40A added by the Police and Justice Act 2006 s 2, Sch 2 para 27). As to the procedure for giving directions under the Police Act 1996 s 40A (as added) see PARA 213 post.

4 Ibid s 40A(2) (as added: see note 3 supra).

5 Ibid s 40A(3) (as added: see note 3 supra).

6 Ibid s 40A(4)(a) (as added: see note 3 supra).

7 Ibid s 40A(4)(b) (as added: see note 3 supra).

8 Ibid s 40A(4)(c) (as added: see note 3 supra).

- 9 Ibid s 40A(4)(d) (as added: see note 3 supra).
- 10 Ie ibid s 40A(4) (as added): see the text to notes 6-9 supra.
- 11 Ibid s 40A(5)(a) (as added: see note 3 supra).
- 12 Ibid s 40A(5)(b) (as added: see note 3 supra).
- 13 Ibid s 40A(5)(c) (as added: see note 3 supra).
- 14 As to the chief inspector of constabulary see PARA 206 ante.
- 15 Police Act 1996 s 40A(6)(a) (as added: see note 3 supra).
- 16 Ibid s 40A(6)(b) (as added: see note 3 supra). For the meaning of 'written' see PARA 115 note 9 ante.
- 17 Ibid s 40A(6) (as added: see note 3 supra).
- 18 Ibid s 40A(7) (as added: see note 3 supra).
- 19 Ie his powers under ibid s 40 (as substituted): see PARA 211 ante.
- 20 See ibid s 40A(8) (as added: see note 3 supra).

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### **213. Procedure for directions in relation to a police force or a police authority.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make further provision as to the procedure to be followed in cases where a proposal is made for the giving of a direction<sup>3</sup> in relation to police force<sup>4</sup>, or a direction<sup>5</sup> in relation to a police authority<sup>6</sup>. The regulations may make different provision for different cases and circumstances<sup>7</sup>. Before making any such regulations, the Secretary of State must consult with the Association of Police Authorities<sup>8</sup>, the Association of Chief Police Officers<sup>9</sup>, and such other persons as he thinks fit<sup>10</sup>.

On giving a direction<sup>11</sup> to a police authority, the Secretary of State must notify the chief officer of police<sup>12</sup> of the force in question that he has given that direction<sup>13</sup>.

Where the Secretary of State gives any such direction he must lay before Parliament a copy of the direction<sup>14</sup> and a report about it<sup>15</sup>. Such a report may be prepared at such time as the Secretary of State considers appropriate<sup>16</sup> and may relate to more than one direction<sup>17</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 The power of the Secretary of State to make regulations is exercisable by statutory instrument: ibid s 102. A statutory instrument containing regulations under s 40B (as added) must not be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House: s 40B(4) (s 40B added by the Police and Justice Act 2006 s 2, Sch 2 para 27).

3 Ie under the Police Act 1996 s 40 (as substituted): see PARA 211 ante.

4 Ibid s 40B(1)(a) (as added: see note 2 supra). For the meaning of 'police force' see PARA 102 note 11 ante.

5 Ie under ibid s 40A (as added): see PARA 212 ante.

6 Ibid s 40B(1)(b) (as added: see note 2 supra). For the meaning of 'police authority' see PARA 139 note 1 ante.

7 Ibid s 40B(3) (as added: see note 2 supra).

8 Ibid s 40B(2)(a) (as added: see note 2 supra). As to consultation with the Association of Police Authorities see PARA 163 note 7 ante.

9 Ibid s 40B(2)(b) (as added: see note 2 supra). As to consultation with the Association of Chief Police Officers see PARA 163 note 7 ante. As to the Association of Chief Police Officers see PARA 423 post.

10 Ibid s 40B(2)(c) (as added: see note 2 supra). For the meaning of 'person' see PARA 110 note 6 ante.

11 Ie under ibid s 40 (as substituted) (see PARA 211 ante) or s 40A (as added) (see PARA 212 ante).

12 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

13 Police Act 1996 s 40B(5) (as added: see note 2 supra).

14 Ibid s 40B(6)(a) (as added: see note 2 supra).

15 Ibid s 40B(6)(b) (as added: see note 2 supra).

16 Ibid s 40B(7)(a) (as added: see note 2 supra).

17 Ibid s 40B(7)(b) (as added: see note 2 supra).

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#### **214. Power to give directions as to training.**

Where a report made to the Secretary of State<sup>1</sup> on an inspection<sup>2</sup> contains recommendations in the case of any police force<sup>3</sup> for the taking of measures relating to the provision of training<sup>4</sup>, or the provision of opportunities for professional development<sup>5</sup>, the Secretary of State may direct the police authority<sup>6</sup> responsible for maintaining that force to take such measures relating to those matters as may be specified in the direction<sup>7</sup>. A police authority must comply with any such direction given to it<sup>8</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 Ie under the Police Act 1996 s 54 (as amended): see PARA 206 ante.

3 For the meaning of 'police force' see PARA 102 note 11 ante.

4 Criminal Justice and Police Act 2001 s 98(1)(a). As to police training generally see PARAS 243-244 post.

5 Ibid s 98(1)(b).

6 For the meaning of 'police authority' see PARA 139 note 1 ante.

7 Criminal Justice and Police Act 2001 s 98(1).

8 Ibid s 98(2).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(i) In general/215. Research.

## 215. Research.

The Secretary of State<sup>1</sup> may set up such bodies and take such other steps as appear to him necessary or expedient for the purpose of undertaking research into matters affecting the efficiency or effectiveness of the police<sup>2</sup>. The Secretary of State may provide and maintain, or may contribute to the provision or maintenance of, such organisations, facilities and services as he considers necessary or expedient for promoting police efficiency or effectiveness<sup>3</sup>. Charges may be made for the use of facilities and services provided by the Secretary of State or by organisations provided or maintained by him<sup>4</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 Police Act 1996 s 58. As to the duty of police authorities to maintain an efficient and effective police force for their areas see the Police Act 1996 s 6 (as amended); and PARA 156 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.

3 Ibid s 57(1). See *R v Secretary of State for the Home Department, ex p Northumbria Police Authority* [1989] QB 26, [1988] 1 All ER 556, CA (consent of local police authority not required where the Secretary of State supplies riot equipment to the chief constable from central store).

4 Police Act 1996 s 57(2).

## UPDATE

### 215 Research

TEXT AND NOTE 3--The power conferred by the 1996 Act s 57(1) includes power to give financial assistance to any person in connection with the provision or maintenance of such organisations, facilities and services as are mentioned in s 57(1): s 57(1A) (s 57(1A)-(1D) added by Criminal Justice and Immigration Act 2008 s 128(1)). Financial assistance under the 1996 Act s 57(1) (1) may, in particular, be given in the form of a grant, loan or guarantee or investment in a body corporate; and (2) may be given subject to terms and conditions determined by the Secretary of State; but any financial assistance under s 57(1) other than a grant requires the consent of the Treasury: s 57(1B). Terms and conditions imposed under head (2) may include terms and conditions as to repayment with or without interest: s 57(1C). Any sums received by the Secretary of State by virtue of terms and conditions imposed under head (2) are to be paid into the Consolidated Fund: s 57(1D). Any loan made by the Secretary of State by virtue of the 1996 Act s 57 and outstanding on the day on which the Criminal Justice and Immigration Act 2008 is passed (ie 8 May 2008) is to be treated as if it were a loan made in accordance with the 1996 Act s 57 as amended by the Criminal Justice and Immigration Act 2008 s 128(1): s 128(2).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(ii) Powers with respect to Chief Officers/216. Power to require retirement, resignation or suspension of chief officers.

## (ii) Powers with respect to Chief Officers

### 216. Power to require retirement, resignation or suspension of chief officers.



The Secretary of State<sup>1</sup> may require the Metropolitan Police Authority<sup>2</sup> or, as the case may be, a police authority in England and Wales<sup>3</sup>, to exercise its power to call upon the Metropolitan Police Commissioner, deputy metropolitan police commissioner or the chief constable of the force in question, in the interests of efficiency or effectiveness, to retire or to resign<sup>4</sup>. The Secretary of State may also in certain cases in which he considers that it is necessary for the maintenance of public confidence in the force in question, require the Metropolitan Police Authority or a police authority to suspend the Commissioner, deputy commissioner or chief constable from duty<sup>5</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

3 I.e a police authority maintaining a police force under the Police Act 1996 s 2: see PARA 136 ante.

4 See *ibid* s 42(1) (as substituted); and PARA 182 ante.

5 See *ibid* s 42(1A), (1B) (as added); and PARA 182 ante. Public confidence in this context is that of the public at large and is not limited to public confidence within the area of the police force in question: *R (on the application of the Secretary of State for the Home Department) v Humberside Police Authority* [2004] EWHC 1642 (Admin), (2004) Times, 9 July, [2004] All ER (D) 48 (Jul).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(iii) Grants and Financing/217. The police grant.

### **(iii) Grants and Financing**

#### **217. The police grant.**

The Secretary of State<sup>1</sup> must for each financial year make grants for police purposes<sup>2</sup> to police authorities<sup>3</sup> for areas other than the metropolitan police district<sup>4</sup> and the Greater London Authority<sup>5</sup>.

For each financial year the Secretary of State must, with the approval of the Treasury<sup>6</sup>, determine<sup>7</sup>: (1) the aggregate amount of the grants to be made<sup>8</sup>; and (2) the amount to be made to each police authority<sup>9</sup>. In determining the allocation among police authorities of the whole or any part of the aggregate amounts of grants, the Secretary of State may exercise his discretion by applying such formulae or other rules as he considers appropriate<sup>10</sup>.

The Secretary of State must prepare a report setting out any determination<sup>11</sup> as to the allocation of police grants and stating the considerations which he took into account in making the determination<sup>12</sup>. A copy of every such report must be laid before the House of Commons, and no payment of grant may be made unless the report setting out the determination of its amount has been approved by resolution of that House<sup>13</sup>.

A grant to a police authority under these provisions must be paid at such time, or in instalments of such amounts and at such times, as the Secretary of State may, with the approval of the Treasury, determine, and any such time may fall within or after the financial year concerned<sup>14</sup>. Where in consequence of a further determination<sup>15</sup> the amount of an authority's grant is less than the amount already paid to it for the year concerned, a sum equal to the difference must be paid by the authority to the Secretary of State on such day as he may specify; but no sum is payable by an authority unless the report setting out the further determination has been approved by resolution of the House of Commons<sup>16</sup>.

The Secretary of State may, with the consent of the Treasury, pay a special grant to a police authority<sup>17</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 'Police purposes', in relation to a police area, includes the purposes of: (1) special constables appointed for that area; (2) police cadets undergoing training with a view to becoming members of the police force maintained for that area; and (3) civilians employed for the purposes of that force or of any such special constables or cadets: *ibid* s 101(2). For the meaning of 'police area' see PARA 136 ante; and for the meaning of 'police force' see PARA 102 note 11 ante. As to special constables see PARA 108 et seq ante; as to police cadets see PARA 113-118 ante; and as to civilian staff see PARA 168 ante.

3 For the meaning of 'police authority' see PARA 139 note 1 ante.

4 Police Act 1996 s 46(1)(a). As to the metropolitan police district see PARA 137 ante.

5 *Ibid* s 46(1)(b) (s 46(1)(b) amended by the Greater London Authority Act 1999 s 325, Sch 27 para 92(1)-(3)). References in the Police Act 1996 s 46 (as amended) to police authorities must be taken as including references to the Greater London Authority: s 46(1) (as so amended). Where the Greater London Authority receives such a grant it must forthwith account for the grant to the Metropolitan Police Authority and pay it over to that Authority: s 46(7A) (added by the Greater London Authority Act 1999 Sch 27 para 92(1), (4)). As to the Greater London Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 34, 79 et seq. As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

6 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 Any determination may be varied by a further determination under the Police Act 1996 s 46 (as amended): s 46(2).

8 *Ibid* s 46(2)(a).

9 *Ibid* s 46(2)(b).

10 *Ibid* s 46(4). The considerations which the Secretary of State takes into account making a determination under s 46(2) (see the text to notes 6-9 supra), and the formulae and other rules referred to in s 46(4), may be different for different authorities or different classes of authority: s 46(5).

11 *Ie* under *ibid* s 46(2): see the text to notes 6-9 supra.

12 *Ibid* s 46(3). See also note 10 supra.

13 *Ibid* s 46(6).

14 *Ibid* s 46(7).

15 *Ie* under *ibid* s 46(2): see notes 6-9 supra.

16 *Ibid* s 46(8). Where the Greater London Authority is required to pay a sum under s 46(8), the Mayor of London may direct the Metropolitan Police Authority to pay an amount not exceeding that sum to the Greater London Authority on such day as he may specify in the direction: s 46(9) (added by the Greater London Authority Act 1999 Sch 27 para 92(1), (5)). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

17 See the Local Government Finance Act 1988 s 88B (as added); and LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 538.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(iii) Grants and Financing/218. Grants for capital expenditure and expenditure on safeguarding national security.

## **218. Grants for capital expenditure and expenditure on safeguarding national security.**

The Secretary of State<sup>1</sup> may make grants in respect of capital expenditure incurred (or to be incurred) for police purposes<sup>2</sup> by police authorities<sup>3</sup> for areas<sup>4</sup> other than the metropolitan police district<sup>5</sup>, and by the Metropolitan Police Authority<sup>6</sup>. The Secretary of State may also make grants in respect of expenditure incurred (or to be incurred) for police purposes by such authorities in connection with safeguarding national security<sup>7</sup>.

Grants under these provisions<sup>8</sup> may be made either unconditionally or subject to conditions<sup>9</sup>.

The Secretary of State may exercise his powers under these provisions only with the approval of the Treasury<sup>10</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 For the meaning of 'police purposes' see PARA 217 note 2 ante.

3 For the meaning of 'police authority' see PARA 139 note 1 ante.

4 For the meaning of 'police area' see PARA 136 ante.

5 Police Act 1996 s 47(1)(a). As to the metropolitan police district see PARA 137 ante.

6 Ibid s 47(1)(b) (amended by the Greater London Authority Act 1999 s 325, Sch 27 para 93(1), (2)). Any such grant made to the Metropolitan Police Authority must be paid to the Greater London Authority: see the Police Act 1996 s 47(4) (s 47(4), (5) added by the Greater London Authority Act 1999 Sch 27 para 93(1), (3)). Where the Greater London Authority receives such a grant, it must forthwith account for the grant to the Metropolitan Police Authority and pay it over to that Authority: Police Act 1996 s 47(5) (as so added). As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante. As to the Greater London Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 34, 79 et seq. As to the police grant see PARA 217 ante.

7 See ibid s 48(1) (amended by the Greater London Authority Act 1999 Sch 27 para 94(1), (2)). Any such grant made to the Metropolitan Police Authority must be paid to the Greater London Authority: see the Police Act 1996 s 48(4) (s 48(4), (5) added by the Greater London Authority Act 1999 Sch 27 para 94(1), (3)). Where the Greater London Authority receives such a grant, it must forthwith account for the grant to the Metropolitan Police Authority and pay it over to that Authority: Police Act 1996 s 48(5) (as so added).

8 I.e. grants under ibid ss 47, 48 (both as amended).

9 Ibid ss 47(2), 48(2).

10 Ibid ss 47(3), 48(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(iii) Grants and Financing/219. Acceptance of gifts and loans.

## 219. Acceptance of gifts and loans.

A police authority<sup>1</sup> may, in connection with the discharge of any of its functions<sup>2</sup>, accept gifts of money, and gifts or loans of other property, on such terms as appear to the authority to be appropriate<sup>3</sup>. The terms on which gifts or loans are so accepted may include terms providing for the commercial sponsorship of any activity of the police authority or of the police force<sup>4</sup> maintained by it<sup>5</sup>.

1 For the meaning of 'police authority' see PARA 139 note 1 ante.

2 As to the functions of police authorities see PARA 156 et seq ante.

3 Police Act 1996 s 93(1). These provisions do not permit police officers to solicit funds from potential victims of crime in relation to the investigation of that crime: see *R v Hounsham* [2005] EWCA Crim 1366, [2005] Crim LR 991, [2005] All ER (D) 406 (May). It was not necessary in this case for the court to consider whether a police authority has power to sanction such activities pursuant to its powers under the Police Act 1996 s 93; however, the court said that, even assuming it did have such power, it is difficult to conceive of a situation where it would be sensible to exercise that power in connection with criminal investigations: see *R v Hounsham* supra at [32] per Gage LJ.

4 For the meaning of 'police force' see PARA 102 note 11 ante.

5 Police Act 1996 s 93(2).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(iii) Grants and Financing/220. Grants by local authorities.

## **220. Grants by local authorities.**

The council of a county, district, county borough, London borough, parish or community may make grants to any police authority in England and Wales<sup>1</sup> whose police area<sup>2</sup> falls wholly or partly within the council's area<sup>3</sup>. The council of a London borough, county, district or parish which falls wholly or partly within the metropolitan police district<sup>4</sup> may make grants for police purposes<sup>5</sup> to the Metropolitan Police Authority<sup>6</sup>. Grants may be made unconditionally or, with the agreement of the chief officer of police<sup>7</sup> for the police area concerned, subject to conditions<sup>8</sup>.

1 ie any police authority established under the Police Act 1996 s 3: see PARA 139 ante.

2 For the meaning of 'police area' see PARA 136 ante.

3 Police Act 1996 s 92(1) (amended by the Local Government and Rating Act 1997 s 31(2)(a)). The Police Act 1996 s 92 (as amended) applies to the Council of the Isles of Scilly as it applies to a county council: s 92(4). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq.

4 As to the metropolitan police district see PARA 137 ante.

5 For the meaning of 'police purposes' see PARA 217 note 2 ante.

6 Police Act 1996 s 92(2) (amended by the Local Government and Rating Act 1997 s 31(2)(b); and the Greater London Authority Act 1999 s 325, Sch 27 para 100). As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

7 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

8 Police Act 1996 s 92(3).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(4) FUNCTIONS OF THE SECRETARY OF STATE/(iii) Grants and Financing/221. Financing of new police authorities.

## **221. Financing of new police authorities.**

The Secretary of State<sup>1</sup> may make grants to any police authority in England and Wales<sup>2</sup> in respect of expenditure incurred (or to be incurred) by it at any time before the beginning of its first precepting year<sup>3</sup>. Without prejudice to any other powers to borrow, any such police authority may borrow by way of temporary loan or overdraft from a bank or otherwise any sums which it may require for the purpose of meeting its expenditure before the beginning of its first precepting year<sup>4</sup>. The sums borrowed by an authority under these provisions must not exceed such amount as the Secretary of State may determine, and must be repaid before the end of its first precepting year<sup>5</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 Ie any police authority established under *ibid* s 3: see PARA 139 ante.

3 *Ibid* s 94(1). The 'first precepting year' of a police authority is the financial year in which revenue is first received by it as a result of a precept issued by it under the Local Government Finance Act 1992 Pt I (ss 1-69) (as amended) (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 524): Police Act 1996 s 94(4).

4 *Ibid* s 94(2).

5 *Ibid* s 94(3).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(5) NATIONAL POLICING IMPROVEMENT AGENCY/222. Abolition of the Police Information Technology Organisation.

## **(5) NATIONAL POLICING IMPROVEMENT AGENCY**

### **222. Abolition of the Police Information Technology Organisation.**

The National Policing Improvement Agency<sup>1</sup> was launched on 1 April 2007, replacing (amongst other organisations<sup>2</sup>) the Police Information Technology Organisation<sup>3</sup>, which was abolished on that date<sup>4</sup>. The Secretary of State<sup>5</sup> may make a scheme for the transfer to the Agency or the Secretary of State of property, rights and liabilities of the Police Information Technology Organisation<sup>6</sup>.

1 As to the constitution etc of the National Policing Improvement Agency see PARA 223 post.

2 The National Policing Improvement Agency also replaced the Central Police Training and Development Authority: see PARA 243 post.

3 The Police Information Technology Organisation was established under the Police Act 1996 s 109, Sch 8 (both repealed by the Police and Justice Act 2006 s 52, Sch 15 Pt 1(A)), to carry out activities (including the commissioning of research) relating to information technology equipment and systems for the use of police authorities and police forces, the Serious Organised Crime Agency, and other prescribed bodies.

4 See the Police and Justice Act 2006 ss 1(2)(b), 53; and the Police and Justice Act 2006 (Commencement No 2, Transitional and Saving Provisions) Order 2007, SI 2007/709, art 3.

Notwithstanding the abolition of the Police Information Technology Organisation, the duties relating to the preparation of a statement of accounts and an annual report for the organisation in respect of the financial year ending on 31 March 2007 subsist and fall on the National Policing Improvement Agency: see the Police and Justice Act 2006 (Commencement No 2, Transitional and Saving Provisions) Order 2007, SI 2007/709, art 6(2), (3).

5 As to the Secretary of State see PARA 107 note 15 ante.

6 See the Police and Justice Act 2006 s 1(3), Sch 1 paras 37-46.

**UPDATE****222 Abolition of the Police Information Technology Organisation**

NOTE 3--Reference to Police Act 1996 should be to Police Act 1997.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(5) NATIONAL POLICING IMPROVEMENT AGENCY/223. National Policing Improvement Agency.

**223. National Policing Improvement Agency.**

The National Policing Improvement Agency is a body corporate<sup>1</sup>. The Agency consists of a chairman appointed by the Secretary of State<sup>2</sup>, the chief executive of the Agency<sup>3</sup>, and other members appointed by the Secretary of State<sup>4</sup>. An appointed member<sup>5</sup> of the Agency holds and vacates office in accordance with the terms of his appointment<sup>6</sup>. An appointed member may resign by giving written notice to the Secretary of State<sup>7</sup>. The Secretary of State may remove a person from office as an appointed member if the Secretary of State is satisfied that: (1) the person has been absent from meetings of the Agency, without its permission, for a period longer than four months<sup>8</sup>; (2) the person has been convicted of an offence in the British Islands or elsewhere<sup>9</sup>; (3) a bankruptcy order has been made against the person, or the person's estate has been sequestered, or the person has made a composition or arrangement with, or granted a trust deed for, his creditors<sup>10</sup>; (4) the person has failed to comply with the terms of his appointment<sup>11</sup>; or (5) the person is unable or unfit to carry out his functions<sup>12</sup>. Previous service as an appointed member of the Agency does not affect a person's eligibility for re-appointment<sup>13</sup>. The Agency must pay to the appointed members such remuneration, allowances, pensions or gratuities as the Secretary of State may determine<sup>14</sup>.

The Agency may delegate any of its functions (to such extent as the Agency may determine) to a committee of the Agency or to a member of the Agency's staff<sup>15</sup>; and a committee may delegate any functions conferred on it (to such extent as the committee may determine) to a sub-committee of the Agency or to a member of the Agency's staff<sup>16</sup>. Delegation of a function does not prevent the Agency or, as the case may be, the committee or sub-committee from exercising the function<sup>17</sup>. A committee or sub-committee of the Agency may include persons who are not members of the Agency<sup>18</sup>.

The Agency may regulate its own procedure (including quorum), and regulate the procedure (including quorum) of its committees and sub-committees<sup>19</sup>. Proceedings of the Agency are not invalidated by any vacancy among the Agency's members<sup>20</sup> or by any defect in the appointment of a member of the Agency<sup>21</sup>.

The application of the Agency's seal must be authenticated by the signature of a member of the Agency<sup>22</sup>, or any other person who has been authorised by the Agency (whether generally or specially) for that purpose<sup>23</sup>. A document purporting to be duly executed under the seal of the Agency or to be signed on the Agency's behalf must be received in evidence<sup>24</sup> and, unless the contrary is proved, must be treated as so executed or signed<sup>25</sup>.

The Agency is not to be regarded as the servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown, and its property is not to be regarded as property of, or held on behalf of, the Crown<sup>26</sup>.

The records of the Agency are public records<sup>27</sup> and the Agency is a public authority for the purposes of the Freedom of Information Act 2000<sup>28</sup>.

The Agency is subject to investigation by the Parliamentary Commissioner for Administration<sup>29</sup>.

In carrying out its functions, the Agency must have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between persons of different racial groups<sup>30</sup>.

1 See the Police and Justice Act 2006 s 1(1). As to bodies corporate see COMPANIES; CORPORATIONS.

The National Policing Improvement Agency replaces the Central Police Training and Development Authority (see PARA 243 post) and the Police Information Technology Organisation (see PARA 222 ante), both of which are abolished: see s 1(2). The Secretary of State may make a scheme for the transfer to the Agency or the Secretary of State of property, rights and liabilities of the Central Police Training and Development Authority and the Police Information Technology Organisation: see s 1(3), Sch 1 paras 37-46. As to the power to modify the constitution of the Agency and any provision regulating its management and control or to confer powers on the Secretary of State in relation thereto see PARA 227 post. As to the Secretary of State see PARA 107 note 15 ante.

2 Ibid Sch 1 para 7(1)(a). Before appointing the chairman of the Agency, the Secretary of State must consult the Association of Police Authorities and the Association of Chief Police Officers: Sch 1 para 7(2). As to the Association of Chief Police Officers see PARA 423 post. The Secretary of State may not appoint a person to be chairman of the Agency for more than five years at a time: Sch 1 para 7(3). All members of the Agency are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1), Sch 1 Pt II (amended by the Police and Justice Act 2006 s 1(3), Sch 1 para 55); and PARLIAMENT vol 78 (2010) PARA 905 et seq. They are similarly disqualified for membership of the Northern Ireland Assembly: see the Northern Ireland Assembly Act 1975 s 1(1), Sch 1 Pt II (amended by the Police and Justice Act 2006 Sch 1 para 56). As to the Northern Ireland Assembly see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Police and Justice Act 2006 Sch 1 para 7(1)(b). As to the chief executive see PARA 225 post.

4 Ibid Sch 1 para 7(1)(c). The Secretary of State must exercise the power of appointment to ensure that at all times the members appointed under this provision include at least one member nominated by the Association of Police Authorities, at least one member nominated by the Association of Chief Police Officers, and at least one member of the home civil service: Sch 1 para 7(4). The Secretary of State may not appoint a person to be a member of the Agency for more than five years at a time: Sch 1 para 7(5). As to the civil service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 549 et seq.

5 'Appointed member' means the chairman of the Agency, or a member appointed under ibid Sch 1 para 7(1)(c) (see the text to note 4 supra): Sch 1 para 7(6).

6 Ibid Sch 1 para 8.

7 Ibid Sch 1 para 9. For the meaning of 'written' see PARA 115 note 9 ante.

8 Ibid Sch 1 para 10(a). For the meaning of 'month' see PARA 140 note 17 ante.

9 Ibid Sch 1 para 10(b). 'British Islands' means the United Kingdom, the Channel Islands and the Isle of Man: Interpretation Act 1978 s 5, Sch 1. For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

10 Police and Justice Act 2006 Sch 1 para 10(c). As to bankruptcy and arrangements and compositions with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

11 Ibid Sch 1 para 10(d).

12 Ibid Sch 1 para 10(e).

13 Ibid Sch 1 para 11.

14 See ibid Sch 1 para 12.

15 Ibid Sch 1 para 22(1). As to the Agency's staff see PARA 225 post.

16 Ibid Sch 1 para 22(2). A sub-committee of the Agency may delegate any functions conferred on it (to such extent as the sub-committee may determine) to a member of the Agency's staff: Sch 1 para 22(3).

17 Ibid Sch 1 para 22(6).

18 Ibid Sch 1 para 22(4). The Agency may pay remuneration and allowances to any person who is a member of a committee or sub-committee of the Agency, but is not a member of the Agency or a member of its staff: Sch 1 para 22(5).

19 Ibid Sch 1 para 23(1). The Agency must make provision for a quorum for meetings of each of its committees and sub-committees to include at least one person who is a member of the Agency or a member of its staff: Sch 1 para 23(2).

20 Ibid Sch 1 para 24(a).

21 Ibid Sch 1 para 24(b).

22 Ibid Sch 1 para 25(a).

23 Ibid Sch 1 para 25(b).

24 Ibid Sch 1 para 26(a).

25 Ibid Sch 1 para 26(b).

26 See ibid Sch 1 para 27. As to the legal status of such bodies see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 951 et seq.

27 See the Public Records Act 1958 s 10(1), Sch 1 paras 1, 3(1), Table Pt II (amended by the Police and Justice Act 2006 Sch 1 para 49); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835 et seq.

28 See the Freedom of Information Act 2000 s 3(1)(a)(i), Sch 1 Pt VI (amended by the Police and Justice Act 2006 Sch 1 para 74); and CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583.

29 See the Parliamentary Commissioner Act 1967 s 4(1), Sch 2 (amended by the Police and Justice Act 2006 Sch 1 para 50); and ADMINISTRATIVE LAW vol 1(1) (Reissue) PARA 41 et seq.

30 See the Race Relations Act 1976 s 71(1), Sch 1A Pt II (s 71 substituted, and Sch 1A added, by the Race Relations (Amendment) Act 2000 s 2(2), Sch 1; Race Relations Act 1976 Sch 1A Pt II amended by the Police and Justice Act 2006 Sch 1 para 60); and DISCRIMINATION vol 13 (2007 Reissue) PARA 469.

## UPDATE

### 223 National Policing Improvement Agency

NOTE 29--Parliamentary Commissioner Act 1967 Sch 2 further amended: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43 TEXT AND NOTES.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(5) NATIONAL POLICING IMPROVEMENT AGENCY/224. Objects.

#### 224. Objects.

The objects of the National Policing Improvement Agency<sup>1</sup> are: (1) the identification, development and promulgation of good practice in policing<sup>2</sup>; (2) the provision to listed police forces<sup>3</sup> of expert advice about, and expert assistance in connection with, operational and other policing matters<sup>4</sup>; (3) the identification and assessment of opportunities for, and threats to, police forces for police areas in England and Wales, and the making of recommendations to the Secretary of State in the light of its assessment of any opportunities and threats<sup>5</sup>; (4) the international sharing of understanding of policing issues<sup>6</sup>; (5) the provision of support to listed police forces in connection with information technology, the procurement of goods, other property and services, and training and other personnel matters<sup>7</sup>; (6) the doing of all such other things as are incidental or conducive to the attainment of any of the objects mentioned in heads (1) to (5) above<sup>8</sup>.



The Agency may do anything it considers appropriate for the attainment of its objects<sup>9</sup>, and in doing so: (a) for the purpose of providing support to listed police forces<sup>10</sup>, may carry on activities itself with a view to forces making use of what is provided through the carrying on of the activities, may support forces in their carrying on of activities themselves, and may support forces in any other way the Agency considers appropriate<sup>11</sup>; and (b) may accept gifts, and loans, of money and other property<sup>12</sup>.

Before the beginning of each financial year<sup>13</sup> the Agency must prepare a plan setting out how it intends during that year to exercise its powers<sup>14</sup>. The plan for a financial year must state: (i) any priorities that the Agency has determined for that year<sup>15</sup>; (ii) any current strategic priorities determined by the Secretary of State<sup>16</sup>; (iii) any current performance targets established by the Agency<sup>17</sup>; and (iv) the financial resources that are expected to be available to the Agency for that year<sup>18</sup>. The plan must state, in relation to each priority within head (i) or head (ii) above, how the Agency intends to give effect to that priority<sup>19</sup>. The Agency must arrange for the plan to be published in such manner as it considers appropriate<sup>20</sup>, and must send a copy of the plan to the Secretary of State, the police authority<sup>21</sup> for each police area in England and Wales, the chief officer of police of each police force in England and Wales, and such other persons as the Agency considers appropriate<sup>22</sup>.

The Secretary of State may determine strategic priorities for the Agency<sup>23</sup>. The Secretary of State must arrange for any such priorities to be published in such manner as he considers appropriate<sup>24</sup>.

1 As to the constitution etc of the National Policing Improvement Agency see PARA 223 ante. As to the power to modify the objects, powers and duties of the Agency or to confer powers on the Secretary of State in relation thereto see PARA 227 post. As to the Secretary of State see PARA 107 note 15 ante.

2 Police and Justice Act 2006 s 1(3), Sch 1 para 1(a).

3 'Listed police force' means the following entities, together with persons employed for the purposes of those entities: (1) any police force within the meaning given by the Police Act 1996 s 101 (police forces for police areas in England and Wales: see PARA 102 note 11 ante), including the cadets and special constables under the control of the chief officer of police of that force; (2) the Serious Organised Crime Agency; (3) the Ministry of Defence Police; (4) the Royal Navy Regulating Branch; (5) the Royal Military Police; (6) the Royal Air Force Police; (7) the Royal Marines Police; (8) the British Transport Police Force, including the cadets and special constables under the direction and control of the chief constable of that force; (9) the Civil Nuclear Constabulary; (10) any person who under the Police and Justice Act 2006 Sch 1 para 3(4) is to be treated as a listed police force; (11) any police force maintained under or by virtue of the Police (Scotland) Act 1967 s 1, including the cadets under the control of the chief constable of that force; (12) the Scottish Police Services Authority and any institution, organisation or other body established and maintained by the Authority; (13) the Police Service of Northern Ireland; (14) the Police Service of Northern Ireland Reserve; (15) the States of Jersey Police Force; (16) the salaried police force of the Island of Guernsey; (17) the Isle of Man Constabulary; and (18) any person who is engaged outside the United Kingdom in the carrying on of activities similar to any carried on by a police force within the meaning given by the Police Act 1996 s 101: Police and Justice Act 2006 Sch 1 para 3(1), (3). For the meaning of 'police area' see PARA 136 note 2 ante. As to police cadets see PARAS 113-118 ante. As to special constables see PARAS 108-112 ante. For the meaning of 'chief officer of police' see PARA 105 note 7 ante. As to the Serious Organised Crime Agency see PARA 430 et seq post. As to the Ministry of Defence Police see PARA 120 et seq ante. As to the British Transport Police Force see PARA 129 ante. As to the Civil Nuclear Constabulary see PARA 128 ante. For the meaning of 'person' see PARA 110 note 6 ante. For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

The Secretary of State may by order provide for a person specified in the order, or of a description so specified, to be treated as being a listed police force: Sch 1 para 3(4). At the date at which this volume states the law no such order had been made.

Any power under the Police and Justice Act 2006 to make an order or regulations is exercisable by statutory instrument: see s 49(1), (2). The power may be exercised so as to make different provision for different purposes or different areas; to make provision generally or for specified cases or circumstances; and to make incidental, supplemental, consequential, saving or transitional provision: s 49(3). A statutory instrument containing an order or regulations other than an order under Sch 1 para 48 (see PARA 227 post) is subject to annulment in pursuance of a resolution of either House of Parliament: s 49(4). A statutory instrument containing an order under Sch 1 para 48 may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament: s 49(5).

- 4 Ibid Sch 1 para 1(b).
- 5 Ibid Sch 1 para 1(c).
- 6 Ibid Sch 1 para 1(d).
- 7 Ibid Sch 1 para 1(e).
- 8 Ibid Sch 1 para 1(f). As to the interpretation of a similar provision in relation to local government see LOCAL GOVERNMENT VOL 69 (2009) PARA 462.
- 9 See ibid Sch 1 para 2(1). Before exercising this power in relation to Scotland or Northern Ireland the Agency must consult with prescribed persons: see Sch 1 para 4.
- 10 Ie such support as is mentioned in ibid Sch 1 para 1(e): see the text to note 7 supra.
- 11 Ibid Sch 1 para 2(2)(a).
- 12 Ibid Sch 1 para 2(2)(b). The terms on which the Agency accepts a gift or loan of money or other property may (in particular) include provision for the commercial sponsorship of any activity of the Agency: Sch 1 para 2(3). The Agency may borrow money or other property only with the consent of the Secretary of State: Sch 1 para 2(4).
- 13 'Financial year' means: (1) the period beginning with the day on which the Agency is established and ending with the following 31 March; and (2) each subsequent period of 12 months ending with 31 March: ibid Sch 1 para 47(2). As respects the financial year referred to in head (1) supra, Sch 1 para 5(1) has effect as if, for the reference to the beginning of the financial year, there were substituted 1 June 2007: Police and Justice Act 2006 (Commencement No 2, Transitional and Saving Provisions) Order 2007, SI 2007/709, reg 6(1).
- 14 Police and Justice Act 2006 Sch 1 para 5(1). Before finalising the plan, the Agency must consult the Secretary of State, the Association of Police Authorities, the Association of Chief Police Officers, and such other persons as the Agency considers appropriate: Sch 1 para 5(7).
- 15 Ibid Sch 1 para 5(2)(a). Such priorities may relate to matters to which strategic priorities determined under Sch 1 para 6 (see the text to notes 23-24 infra) also relate, or may relate to other matters, but in any event must be so framed as to be consistent with strategic priorities so determined: Sch 1 para 5(3).
- 16 Ibid Sch 1 para 5(2)(b).
- 17 Ibid Sch 1 para 5(2)(c).
- 18 Ibid Sch 1 para 5(2)(d). As to financial provision see PARA 226 post.
- 19 Ibid Sch 1 para 5(4).
- 20 Ibid Sch 1 para 5(5).
- 21 For the meaning of 'police authority' see PARA 139 note 1 ante.
- 22 Police and Justice Act 2006 Sch 1 para 5(6).
- 23 Ibid Sch 1 para 6(1). Before determining any such priorities the Secretary of State must consult the Agency, the Association of Chief Police Officers, and the Association of Police Authorities: Sch 1 para 6(2). In relation to priorities affecting Scotland the Secretary of State must consult the Scottish Ministers: see Sch 1 para 6(3), (4). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 24 Ibid Sch 1 para 6(5).

## UPDATE

### 224 Objects

TEXT AND NOTES 1-8, 23, 24--Police and Justice Act 2006 Sch 1 para 1 amended, Sch 1 para 6(4A) added: Serious Crime Act 2007 Sch 8 para 177(2), (4).

NOTE 3--Police and Justice Act 2006 s 49(1) amended: Criminal Justice and Immigration Act 2008 Sch 26 para 81(2), Sch 28 Pt 8. In the meaning of 'listed police force', head (4) now refers to the Royal Navy Police and head (7) is omitted: Police and Justice Act 2006 Sch 1 para 3(3) (amended by SI 2009/2054).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(5) NATIONAL POLICING IMPROVEMENT AGENCY/225. Chief executive and staff.

## **225. Chief executive and staff.**

The Secretary of State<sup>1</sup> must appoint a person to be chief executive of the National Policing Improvement Agency<sup>2</sup>. The chief executive of the Agency is a member of its staff<sup>3</sup>, and the Agency must pay to its chief executive such remuneration and allowances as the Secretary of State may determine<sup>4</sup>.

The Agency must pay to other members of its staff such remuneration and allowances as it may determine<sup>5</sup>, and may pay or make payments in respect of such pensions and gratuities for members of its staff as it may determine<sup>6</sup>.

Where a person who is a constable<sup>7</sup> is appointed as a member of the Agency's staff, that person continues to be a constable for the period during which he is a member of that staff<sup>8</sup>, and is under the direction and control of the chief executive of the Agency<sup>9</sup>. If the person is appointed as chief executive, he holds the rank of chief constable for the period during which he is chief executive<sup>10</sup>. The Secretary of State may by regulations make provision as to the government, administration and conditions of service of employed or seconded constables<sup>11</sup>. The Agency may, in such cases and to such extent as appear to it to be appropriate, pay damages or costs awarded against a member of the Agency's staff in proceedings for any unlawful conduct of that person<sup>12</sup>, pay any costs incurred and not recovered by such a person in such proceedings<sup>13</sup>, and pay any sum required in connection with the settlement of a claim that has, or might have, given rise to such proceedings<sup>14</sup>.

The Agency is liable for unlawful conduct of seconded constables<sup>15</sup> in the carrying out, or purported carrying out, of their functions as members of the Agency's staff in the same manner as an employer is liable for unlawful conduct of his employees in the course of their employment<sup>16</sup>; and in the case of any such conduct by a seconded constable which is a tort, the Agency is accordingly to be treated as a joint tortfeasor<sup>17</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 Police and Justice Act 2006 s 1(3), Sch 1 para 13(1). Before doing so, the Secretary of State must consult the chairman of the Agency (Sch 1 para 13(2)); however, this does not apply to the first appointment of a chief executive of the Agency (Sch 1 para 13(3)). As to the constitution etc of the National Policing Improvement Agency, and as to the chairman of the Agency, see PARA 223 ante.

3 Ibid Sch 1 para 13(4). As to the power to confer powers on the Secretary of State in relation to members of the Agency's staff see PARA 227 post.

4 Ibid Sch 1 para 13(5).

5 Ibid Sch 1 para 14(1). This provision does not apply in relation to the chief executive of the Agency: Sch 1 para 14(2). In relation to a person seconded to the Agency to serve as a member of its staff, Sch 1 para 14(1) has effect subject to the arrangements under which the person is seconded: Sch 1 para 14(3). Arrangements under which a person is seconded to the Agency to serve as a member of its staff may (in particular) contain provision for the making of payments by the Agency in respect of remuneration and allowances paid to the person by another: Sch 1 para 14(4).

- 6 See *ibid* Sch 1 paras 15, 16.
- 7 As to the office of constable see PARA 101 *et seq ante*.
- 8 Police and Justice Act 2006 Sch 1 para 17(1), (2). In relation to the terms and conditions of the contracts of employment of employed constables, the Agency must comply with rules or principles contained in any document issued to it for the purpose by the Secretary of State: Sch 1 para 18(1). As to such rules and principles see Sch 1 para 18(2), (3).
- 9 *Ibid* Sch 1 para 17(1), (4).
- 10 *Ibid* Sch 1 para 17(3). As to chief constables see PARA 179 *ante*.
- 11 See *ibid* Sch 1 para 19. At the date at which this volume states the law no such regulations had been made. As to the making of regulations see PARA 224 note 3 *ante*.
- 12 *Ibid* Sch 1 para 21(a).
- 13 *Ibid* Sch 1 para 21(b).
- 14 *Ibid* Sch 1 para 21(c).
- 15 'Seconded constable' means a constable serving as a member of the Agency's staff without being an employee of the Agency: *ibid* Sch 1 para 20(3).
- 16 *Ibid* Sch 1 para 20(1). As to such liability see TORT vol 45(2) (Reissue) PARA 329. The Police and Justice Act 2006 Sch 1 para 20 does not apply to any liability by virtue of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK): s 51A(2D), (2E)(g) (s 51A added by the Police (Health and Safety) Act 1997 s 1; Health and Safety at Work etc Act 1974 s 51A(2D), (2E) added by the Serious Organised Crime and Police Act 2005 s 158(1); Health and Safety at Work etc Act 1974 s 51A(2E)(g) added by the Police and Justice Act 2006 Sch 1 para 54).
- 17 Police and Justice Act 2006 Sch 1 para 20(2). See also note 16 *supra*. As to joint tortfeasors see TORT vol 45(2) (Reissue) PARA 683.

## UPDATE

### 225 Chief executive and staff

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(5) NATIONAL POLICING IMPROVEMENT AGENCY/226. Accountability, supervision and finance.

### 226. Accountability, supervision and finance.

As soon as possible after the end of each financial year<sup>1</sup>, the National Policing Improvement Agency<sup>2</sup> must prepare a report on the carrying out of its functions during that year<sup>3</sup>. The report for a financial year must include an assessment of the extent to which the annual plan for that year has been carried out<sup>4</sup>. The Agency must arrange for the report to be published in such manner as it considers appropriate<sup>5</sup>.

The Secretary of State may require the Agency to submit a report<sup>6</sup> to him on specified matters connected with the carrying out of its functions<sup>7</sup>, or otherwise connected with any of its

activities<sup>8</sup>. The Secretary of State may arrange, or require the Agency to arrange, for such a report to be published in such manner as he considers appropriate<sup>9</sup>.

The Secretary of State may require the chief inspector of constabulary<sup>10</sup> to inspect, and report on, the efficiency and effectiveness of the Agency<sup>11</sup>. The Secretary of State must arrange for such a report to be published in such manner as he considers appropriate<sup>12</sup>. The Secretary of State must send a copy of the published report to the Agency<sup>13</sup>; and the Agency must prepare comments on the published report<sup>14</sup>, and arrange for its comments to be published in such manner as it considers appropriate<sup>15</sup>. Where an inspection report made to the Secretary of State states: (1) that the Agency is failing to carry out any of its functions efficiently and effectively, whether generally or in particular respects<sup>16</sup>; or (2) that, unless remedial measures are taken, the Agency will cease to carry out any of its functions efficiently and effectively, whether generally or in particular respects<sup>17</sup>, the Secretary of State may direct the Agency to take such measures as may be specified in the direction<sup>18</sup>.

The Secretary of State may make payments to the Agency<sup>19</sup>. The Agency may make such charges as it considers appropriate in connection with the carrying out of any of its functions<sup>20</sup>, and must pay to the Secretary of State all sums received by it in the course of, or in connection with, the carrying out of its functions<sup>21</sup>. The Agency may, for purposes it considers are related to any of its objects, make payments to the police authority for a police area in England and Wales<sup>22</sup>.

The Agency must keep proper accounts and proper records in relation to the accounts<sup>23</sup>, and prepare a statement of accounts in respect of each financial year<sup>24</sup>. The Agency must, within such period following the end of each financial year as the Secretary of State may direct, send copies of the statement of accounts for that year to the Secretary of State<sup>25</sup>, and to the Comptroller and Auditor General<sup>26</sup>. The Comptroller and Auditor General must examine, certify and report on each statement of accounts sent to him<sup>27</sup>, and lay a copy of each such statement, and of his report on it, before each House of Parliament<sup>28</sup>.

1 For the meaning of 'financial year' see PARA 224 note 13 ante.

2 As to the constitution etc of the National Policing Improvement Agency see PARA 223 ante.

3 Police and Justice Act 2006 s 1(3), Sch 1 para 28(1). As to the objects of the Agency see PARA 224 ante.

4 Ibid Sch 1 para 28(2). As to annual plans see PARA 224 ante.

5 Ibid Sch 1 para 28(3). The Agency must send a copy of the report to the Secretary of State, the police authority for each police area in England and Wales, the chief officer of police of each police force in England and Wales, and such other persons as the Agency considers appropriate: Sch 1 para 28(4). The Secretary of State must lay a copy of the report before each House of Parliament: Sch 1 para 28(5). As to the Secretary of State see PARA 107 note 15 ante. For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'police area' see PARA 136 note 2 ante. For the meaning of 'chief officer of police' see PARA 105 note 7 ante. For the meaning of 'police force' see PARA 102 note 11 ante. For the meaning of 'person' see PARA 110 note 6 ante.

6 A report must be in such form as the Secretary of State may specify: ibid Sch 1 para 29(2).

7 Ibid Sch 1 para 29(1)(a).

8 Ibid Sch 1 para 29(1)(b).

9 Ibid Sch 1 para 29(3). The Secretary of State may exclude any part of a report from publication if he considers that publication of that part: (1) would be against the interests of national security; (2) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders; or (3) could jeopardise the safety of any person: Sch 1 para 29(4). For the purposes of head (2) supra, 'the detection of crime' includes establishing by whom, for what purpose, by what means, and generally in what circumstances any crime was committed: Sch 1 para 29(5). For these purposes, 'crime' means conduct which constitutes one or more criminal offences under the law of a part of the United Kingdom, or which is, or corresponds to, any conduct which, if it all took place in one part of the United Kingdom, would constitute one or more criminal

offences under the law of that part: Sch 1 para 29(6). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

10 As to the chief inspector of constabulary see PARA 206 ante.

11 Police and Justice Act 2006 Sch 1 para 30(1). A requirement may be general or relate to a particular matter: Sch 1 para 30(2).

12 Ibid Sch 1 para 31(1). The Secretary of State may exclude any part of a report from publication if he considers that publication of that part: (1) would be against the interests of national security; (2) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders; or (3) could jeopardise the safety of any person: Sch 1 para 31(2). For the purposes of head (2) supra, 'the detection of crime' includes establishing by whom, for what purpose, by what means, and generally in what circumstances any crime was committed: Sch 1 para 31(6). For these purposes, 'crime' means conduct which constitutes one or more criminal offences under the law of a part of the United Kingdom, or which is, or corresponds to, any conduct which, if it all took place in one part of the United Kingdom, would constitute one or more criminal offences under the law of that part: Sch 1 para 31(7).

13 Ibid Sch 1 para 31(3).

14 Ibid Sch 1 para 31(4)(a).

15 Ibid Sch 1 para 31(4)(b). The Agency must send a copy of any such published document to the Secretary of State: Sch 1 para 31(5).

16 Ibid Sch 1 para 32(1)(a).

17 Ibid Sch 1 para 32(1)(b).

18 Ibid Sch 1 para 32(2).

19 Ibid Sch 1 para 33.

20 Ibid Sch 1 para 34(1).

21 Ibid Sch 1 para 34(2). This provision does not apply to sums received by the Agency under Sch 1 para 33 (see the text to note 19 supra), and does not apply where the Secretary of State so directs: Sch 1 para 34(3).

22 Ibid Sch 1 para 35(a). Similar payments may be made in relation to police authorities and other bodies in Scotland: see Sch 1 para 35(b)-(d).

23 Ibid Sch 1 para 36(1)(a).

24 Ibid Sch 1 para 36(1)(b). The statement of accounts for a financial year must be in such form, and contain such information, as the Secretary of State may direct: Sch 1 para 36(2).

25 Ibid Sch 1 para 36(3)(a).

26 Ibid Sch 1 para 36(3)(b). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

27 Ibid Sch 1 para 36(4)(a).

28 Ibid Sch 1 para 36(4)(b).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/2. POLICE ADMINISTRATION/(5) NATIONAL POLICING IMPROVEMENT AGENCY/227. Power to modify the objects, functions and structure of the Agency.

## **227. Power to modify the objects, functions and structure of the Agency.**

The appropriate authority<sup>1</sup> may by order<sup>2</sup> make provision<sup>3</sup>: (1) for modifying<sup>4</sup> the objects, powers and duties of the National Policing Improvement Agency<sup>5</sup>; (2) for modifying the

constitution of the Agency and any provision regulating its management and control<sup>6</sup>; (3) for conferring powers on the Secretary of State in relation to the objects, powers and duties of the Agency<sup>7</sup>, the constitution of the Agency and the regulation of its management and control<sup>8</sup>, and members of the Agency's staff<sup>9</sup>; (4) for imposing, on persons<sup>10</sup> in relation to whom the Agency has or is given powers or duties, obligations to consult with the Agency or to do other things in relation to the Agency<sup>11</sup>.

Power under heads (1) to (4) above may be exercised to give the Agency objects, powers or duties in relation to persons who have no functions in relation to, nor any connection with, policing if: (a) they carry out functions in, or in relation to, prisons in England or Wales<sup>12</sup>; (b) they are officers of a local probation board<sup>13</sup>; or (c) they are persons falling within neither of heads (a) and (b) above who carry out functions for the purposes of the criminal justice system in England and Wales<sup>14</sup>.

1 Power of the appropriate authority: (1) so far as it is power to make provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, is power of the Scottish Ministers (Police and Justice Act 2006 s 1(3), Sch 1 para 48(4)(a), (5)); and (2) so far as it is power to make provision not falling within head (1) supra, is power of the Secretary of State (Sch 1 para 48(4)(b)). Power of the Scottish Ministers is exercisable only with the consent of the Secretary of State: Sch 1 para 48(6). As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Scottish Ministers of their power see s 49(6), Sch 1 para 48(11)-(13). As to the Scottish Ministers and the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 Before making an order, the Secretary of State must consult the National Policing Improvement Agency, the Association of Police Authorities, and the Association of Chief Police Officers: *ibid* Sch 1 para 48(10). An order may: (1) make provision for the making of determinations, or the giving of approvals, by the Secretary of State under the order; (2) contain provision framed by reference to determinations made or approvals given under provision such as is mentioned in head (1) supra; (3) contain provision framed by reference to the Secretary of State's opinion, from time to time, as to any matter: Sch 1 para 48(14). As to the making of orders see PARA 224 note 3 ante. As to the constitution etc of the National Policing Improvement Agency see PARA 223 ante. As to the Association of Chief Police Officers see PARA 423 post.

3 Provision under *ibid* Sch 1 para 48(1) may take the form of amendments of enactments whenever passed or made, including enactments comprised in, or in instruments made under, Acts of the Scottish Parliament, enactments comprised in, or in instruments made under, Northern Ireland legislation, and enactments comprised in subordinate legislation: Sch 1 para 48(15). For the meaning of 'enactment' see PARA 102 note 5 ante. For the meaning of 'subordinate legislation' see PARA 168 note 20 ante.

4 In *ibid* Sch 1 para 48(1), 'modifying' includes adding to, varying and diminishing: Sch 1 para 48(2).

5 *Ibid* Sch 1 para 48(1)(a). Power of the Secretary of State under Sch 1 para 48(1)(a), (b) and (c), so far as it is power to make provision that affects, or may affect, certain police forces and other policing bodies in Scotland (see Sch 1 para 4(2)), or that affects, or may affect, the rights and powers of the Scottish Ministers, is exercisable only with the consent of the Scottish Ministers: Sch 1 para 48(7), (8). As to the objects of the Agency see PARA 224 ante.

6 *Ibid* Sch 1 para 48(1)(b). See also notes 4, 5 supra.

7 *Ibid* Sch 1 para 48(1)(c)(i). See also note 5 supra.

8 *Ibid* Sch 1 para 48(1)(c)(ii). See also note 5 supra.

9 *Ibid* Sch 1 para 48(1)(c)(iii). See also note 5 supra. As to the Agency's staff see PARA 225 ante.

10 For the meaning of 'person' see PARA 110 note 6 ante.

11 Police and Justice Act 2006 Sch 1 para 48(1)(d). Power of the Secretary of State under Sch 1 para 48(1)(d), so far as it is power to impose obligations on any of certain police forces and other policing bodies in Scotland (see Sch 1 para 4(2)), is exercisable only with the consent of the Scottish Ministers: Sch 1 para (9).

12 *Ibid* Sch 1 para 48(3)(a).

13 *Ibid* Sch 1 para 48(3)(b). As to local probation boards see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 737 et seq.

14 Ibid Sch 1 para 48(3)(c).

## **UPDATE**

### **227 Power to modify the objects, functions and structure of the Agency**

TEXT AND NOTE 13--2006 Act Sch 1 para 48(3)(b) amended: SI 2008/912.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(1) IN GENERAL/228. Regulations for police forces.

## **3. POLICE ORGANISATION**

### **(1) IN GENERAL**

#### **228. Regulations for police forces.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> as to the government, administration and conditions of service<sup>3</sup> of police forces<sup>4</sup>. The regulations may make provision with respect to:

- 38 (1) the ranks to be held by members of police forces<sup>5</sup>;
- 39 (2) the qualifications for appointment and promotion of members of police forces<sup>6</sup>;
- 40 (3) periods of service on probation<sup>7</sup>;
- 41 (4) voluntary retirement of members of police forces<sup>8</sup>;
- 42 (5) the conduct, efficiency and effectiveness of members of police forces and the maintenance of discipline<sup>9</sup>;
- 43 (6) the suspension of members of a police force from membership of that force and from their office as constable<sup>10</sup>;
- 44 (7) the maintenance of personal records of members of police forces<sup>11</sup>;
- 45 (8) the duties which are or are not to be performed by members of police forces<sup>12</sup>;
- 46 (9) the treatment as occasions of police duty of attendance at meetings of the Police Federation<sup>13</sup>;
- 47 (10) the hours of duty, leave, pay and allowances of members of police forces<sup>14</sup>; and
- 48 (11) the issue, use and return of police clothing, personal equipment and accoutrements<sup>15</sup>.

The regulations must: (a) establish, or make provision for the establishment of, procedures for cases in which a member of a police force may be dealt with by dismissal, requirement to resign, reduction in rank, reduction in rate of pay, fine, reprimand or caution<sup>16</sup>; (b) make provision for securing that any case in which a senior officer<sup>17</sup> may be dismissed or dealt with in any of the other ways mentioned in head (a) above is decided by the police authority<sup>18</sup> which maintains the force or by a committee of that authority<sup>19</sup>.

The regulations may<sup>20</sup> authorise or require provision to be made by, or confer discretionary powers on, the Secretary of State, police authorities, chief officers of police<sup>21</sup> or other persons<sup>22</sup> or may authorise or require the delegation by any person of functions conferred on him by or under the regulations<sup>23</sup>.



The Secretary of State may also make regulations<sup>24</sup> as to: (i) police training<sup>25</sup>; and (ii) the qualifications for deployment to perform particular tasks of persons serving or employed for policing purposes in England and Wales<sup>26</sup>. The regulations may<sup>27</sup>: (A) authorise or require provision to be made by, or confer discretionary powers on, the Secretary of State, police authorities, chief officers of police or other persons<sup>28</sup>; or (B) authorise or require the delegation by any person of functions conferred on that person by or under the regulations<sup>29</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 Such regulations may make different provision for different cases and circumstances: *ibid* s 50(7). The power of the Secretary of State to make such regulations is exercisable by statutory instrument: s 102. Any statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 50(8). The following regulations have been made: the Police (Efficiency) Regulations 1999, SI 1999/732 (see PARA 280 et seq post); the Police Regulations 2003, SI 2003/527 (see PARA 232 et seq post); and the Police (Conduct) Regulations 2004, SI 2004/645 (see PARA 245 et seq post). The following regulations have effect as if made under the Police Act 1996 s 50 (as amended) by virtue of s 103(2), Sch 8 para 1(2): the Police (Transferred Airport Constables) Regulations 1975, SI 1975/378; and the Police (Promotion) Regulations 1996, SI 1996/1685 (see PARAS 236-238 ante).

The Police Negotiating Board for the United Kingdom has power to make representations in respect of proposed regulations under the Police Act 1996 s 50 (as amended): see s 62 (as amended); and PARA 424 post. The Police Advisory Board for England and Wales has similar power: see s 63 (as amended); and PARA 425 post.

3 Regulations as to conditions of service must secure that appointments for fixed terms are not made except where the person appointed holds the rank of superintendent or a higher rank: *ibid* s 50(6). As to fixed term appointments for certain ranks see the Police Regulations 2003, SI 2003/527, reg 11; and PARA 233 post.

4 Police Act 1996 s 50(1). This provision is expressed to be subject to the other provisions of s 50 (as amended). For the meaning of 'police force' see PARA 102 note 11 ante. The Secretary of State is not under an obligation to make regulations to deal with all the many aspects of police work and its organisation. Where regulations are made chief officers of police may not issue orders that conflict with those regulations; but they may issue orders which supplement the regulations: see *Re Shields* [2003] UKHL 3, [2003] NI 161, [2003] All ER (D) 81 (Feb).

5 Police Act 1996 s 50(2)(a). See PARA 230 post.

6 *Ibid* s 50(2)(b). See PARAS 232-233, 236 post.

7 *Ibid* s 50(2)(c). See PARAS 234-235 post.

8 *Ibid* s 50(2)(d). See PARA 239 post.

9 *Ibid* s 50(2)(e). See PARA 245 et seq post.

10 *Ibid* s 50(2)(f). See PARA 249 post. As to the office of constable see PARA 101 et seq ante.

11 *Ibid* s 50(2)(g). See PARA 395 post.

12 *Ibid* s 50(2)(h). See PARA 478 post.

13 *Ibid* s 50(2)(i). See PARA 423 post. This includes attendance at meetings of any body recognised by the Secretary of State for the purposes of trade union membership (see s 64 (as amended); and PARA 426 post): s 50(2)(i).

14 *Ibid* s 50(2)(j). See PARA 396 et seq post. Regulations under s 50 (as amended) for regulating pay and allowances may be made with retrospective effect to any specified date, but this does not authorise pay or allowances payable to any person to be reduced retrospectively: s 50(5).

15 *Ibid* s 50(2)(k). See PARA 402 post. As to regulations as to the standard of equipment see s 53 (as amended); and PARA 229 post.

16 *Ibid* s 50(3)(a). See PARA 245 et seq post.

17 'Senior officer' means a member of a police force holding a rank above that of chief superintendent: *ibid* s 50(3) (amended by the Criminal Justice and Police Act 2001 s 125(3), (4)(a)). As to ranks see PARA 230 post.

18 For the meaning of 'police authority' see PARA 139 note 1 ante.

19 Police Act 1996 s 50(3)(b) (amended by the Greater London Authority Act 1999 s 325, Sch 27 para 95). See PARA 245 et seq post.

20 Ie subject to the Police Act 1996 s 50(3)(b) (as amended): see the text to notes 17-19 supra).

21 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

22 Police Act 1996 s 50(4)(a). For the meaning of 'person' see PARA 110 note 6 ante.

23 Ibid s 50(4)(b).

24 The power of the Secretary of State to make such regulations is exercisable by statutory instrument: Criminal Justice and Police Act 2001 s 100(1). Any such regulations may make different provision for different cases: s 100(2). A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 97(5). At the date at which this volume states the law no such regulations had been made.

Before making the regulations the Secretary of State must consult: (1) the National Policing Improvement Agency (s 97(4)(a) (substituted by the Police and Justice Act 2006, s 1(3), Sch 1 para 79(1), (2))); (2) Her Majesty's Inspectors of Constabulary (Criminal Justice and Police Act 2001 s 97(4)(b)); (3) the Association of Police Authorities (s 97(4)(c) (s 97(4)(c), (d) substituted by the Police and Justice Act 2006 s 6(1), Sch 4 para 10)); and (4) the Association of Chief Police Officers (Criminal Justice and Police Act 2001 s 97(4)(d) (as so substituted)). As to the National Policing Improvement Agency see PARA 223 ante. As to Her Majesty's Inspectors of Constabulary see PARA 206 ante. As to consultation with the Association of Police Authorities and the Association of Chief Police Officers see PARA 163 note 7 ante. As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

25 Ibid s 97(1)(a) (amended by the Police and Justice Act 2006 s 52, Sch 15 Pt 1(A)). Without prejudice to the generality of the Criminal Justice and Police Act 2001 s 97(1), regulations made by virtue of s 97(1)(a) (as amended) may make provision with respect to the curriculum for courses of training for persons serving or employed for policing purposes in England and Wales, including the evaluation, approval and manner of devising the curriculum, or any part of it: s 97(2). References to the provision of police training are references to the provision of training and opportunities for professional development for persons serving or employed for policing purposes in England and Wales; references to the provision of training include references to the provision of assessment and examination services; and references to a person serving or employed for policing purposes in England and Wales are references to a person who is a member of a police force in England and Wales, a special constable appointed under the Police Act 1996 s 27 (see PARA 109 ante), or a person employed for the purposes of a police force in England and Wales: Criminal Justice and Police Act 2001 s 97(6) (substituted by the Police and Justice Act 2006 Sch 1 para 79(1), (3)).

26 Criminal Justice and Police Act 2001 s 97(1)(b).

27 Ie in relation to any matter as to which provision may be made by regulations under ibid s 97 (as amended): s 97(3).

28 Ibid s 97(3)(a).

29 Ibid s 97(3)(b).

## UPDATE

### 228 Regulations for police forces

NOTE 2--SI 1999/732 revoked: SI 2008/2862. SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

TEXT AND NOTES 16-23--Police Act 1996 s 50(3) substituted, s 50(4) amended: Criminal Justice and Immigration Act 2008 Sch 22 para 3, Sch 28 Pt 8. For savings see SI 2008/2993.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(1) IN GENERAL/229. Regulations as to standard of equipment.

## **229. Regulations as to standard of equipment.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> requiring equipment<sup>3</sup> provided or used for police purposes<sup>4</sup> to satisfy such requirements as to design and performance as may be prescribed in the regulations<sup>5</sup>.

The Secretary of State may by regulations<sup>6</sup> make any or all of the following provisions:

- 49 (1) provision requiring all police forces in England and Wales, when using equipment for the purposes specified in the regulations, to use only: (a) the equipment which is specified in the regulations<sup>7</sup>; (b) equipment which is of a description so specified<sup>8</sup>; or (c) equipment which is of a type approved by the Secretary of State in accordance with the regulations<sup>9</sup>;
- 50 (2) provision requiring all police forces in England and Wales to keep available for use the equipment falling within heads (1)(a) to (1)(c) above which is specified or described in, or approved in accordance with, the regulations<sup>10</sup>;
- 51 (3) provision prohibiting all police forces in England and Wales from using equipment of a type approved as mentioned in head (1)(c) above except where the conditions subject to which the approval was given are satisfied<sup>11</sup> and in accordance with the other terms of that approval<sup>12</sup>;
- 52 (4) provision requiring equipment used by police forces in England and Wales to comply, in the case of all police forces, with such conditions as may be specified in the regulations, or as may be approved by the Secretary of State in accordance with the regulations<sup>13</sup>;
- 53 (5) provision prohibiting all police forces in England and Wales from using equipment specified in the regulations, or any equipment of a description so specified<sup>14</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 Regulations under *ibid* s 53 (as amended) may make different provision for different cases and circumstances: s 53(2A) (s 53(1A), (1B), (2A)-(2C) added by the Police Reform Act 2002 s 6). The power of the Secretary of State to make such regulations is exercisable by statutory instrument: Police Act 1996 s 102. A statutory instrument containing any such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 53(2B) (as so added). At the date at which this volume states the law no such regulations had been made.

Before making any regulations under s 53 (as amended), the Secretary of State must consult with: (1) the Association of Police Authorities (s 53(2)(a) (s 53(2) added by the Police Act 1997 s 134(1), Sch 9 para 75; and substituted by the Police Reform Act 2002 s 6; and the Police Act 1996 s 53(2)(a), (b) further substituted by the Police and Justice Act 2006 s 6(1), Sch 4 para 5)); (2) the Association of Chief Police Officers (Police Act 1996 s 53(2)(b) (as so added and substituted)); and (3) such other persons as he thinks fit (s 53(2)(c) (as so added and substituted)). As to consultation with the Association of Police Authorities and the Association of Chief Police Officers see PARA 163 note 7 ante. For the meaning of 'person' see PARA 110 note 6 ante.

3 'Equipment' includes vehicles, and headgear and protective and other clothing: *ibid* s 53(2C) (as added: see note 2 supra).

4 For the meaning of 'police purposes' see PARA 217 note 2 ante.

5 Police Act 1996 s 53(1) (renumbered by the Police Act 1997 Sch 9 paras 72, 75).

6 The Secretary of State must not make any regulations under the Police Act 1996 s 53(1A) (as added) unless he considers it necessary to do so for the purpose of promoting the efficiency and effectiveness generally of the police forces maintained for police areas in England and Wales: s 53(1B) (as added: see note 2 supra). As to the making of such regulations see note 2 supra. At the date at which this volume states the law

no such regulations had been made. For the meaning of 'police force' see PARA 102 note 11 ante. For the meaning of 'police area' see PARA 136 note 2 ante.

7 Ibid s 53(1A)(a)(i) (as added: see note 2 supra).

8 Ibid s 53(1A)(a)(ii) (as added: see note 2 supra).

9 Ibid s 53(1A)(a)(iii) (as added: see note 2 supra).

10 Ibid s 53(1A)(b) (as added: see note 2 supra).

11 Ibid s 53(1A)(c)(i) (as added: see note 2 supra).

12 Ibid s 53(1A)(c)(ii) (as added: see note 2 supra).

13 Ibid s 53(1A)(d) (as added: see note 2 supra).

14 Ibid s 53(1A)(e) (as added: see note 2 supra).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(1) IN GENERAL/230. Ranks and part-time appointments.

### **230. Ranks and part-time appointments.**

The ranks that may be held in a police force<sup>1</sup> maintained for a police area in England and Wales<sup>2</sup> are such as may be prescribed by regulations<sup>3</sup> and the ranks so prescribed must include, in addition to chief constable<sup>4</sup>, deputy chief constable<sup>5</sup> and assistant chief constable<sup>6</sup>, the ranks of chief superintendent, superintendent, chief inspector, inspector, sergeant and constable<sup>7</sup>. Appointments and promotions to any rank below that of assistant chief constable in any such police force are made by the chief constable<sup>8</sup>.

The ranks that may be held in the metropolitan police force<sup>9</sup> are such as may be prescribed by regulations<sup>10</sup>. The ranks so prescribed must include, in addition to the ranks of Metropolitan Police Commissioner<sup>11</sup>, deputy metropolitan police commissioner<sup>12</sup>, assistant metropolitan police commissioner<sup>13</sup>, deputy assistant metropolitan police commissioner<sup>14</sup> and commander<sup>15</sup>, those of chief superintendent, superintendent, chief inspector, inspector, sergeant and constable<sup>16</sup>. Appointments and promotions to any rank below that of commander are made by the Metropolitan Police Commissioner<sup>17</sup>.

In respect of the City of London police force<sup>18</sup>, a City of London Police Commissioner is appointed under the Acts relating to that force<sup>19</sup>; and the other ranks are assistant City of London police commissioner, commander, chief superintendent, superintendent, chief inspector, inspector, sergeant, and constable<sup>20</sup>.

A chief officer of police<sup>21</sup> may, after consultation with local representatives of the representative bodies<sup>22</sup>, appoint persons to perform part-time service in any rank<sup>23</sup>. A person appointed to perform part-time service may not be appointed to serve as a full-time member<sup>24</sup> without his consent<sup>25</sup>; and a person serving as a full-time member of a police force may not be appointed to perform part-time service without his consent<sup>26</sup>.

A person appointed to perform part-time service immediately after serving as a full-time member may give notice in writing<sup>27</sup> of his intention to be re-appointed as a full-time member and must be so appointed: (1) within one month<sup>28</sup> of the date the notice is received by the police authority<sup>29</sup>, where the authority has a suitable vacancy<sup>30</sup>; or (2) except where head (1) above applies, when three months have elapsed since the day the notice was received, or from an earlier date if reasonably practicable<sup>31</sup>.

- 1 For the meaning of 'police force' see PARA 102 note 11 ante.
- 2 le under the Police Act 1996 s 2: see PARA 136 ante. For the meaning of 'police area' see PARA 136 note 2 ante.
- 3 le regulations under ibid s 50 (as amended): see note 7 infra; and PARA 228 ante.
- 4 As to the appointment and removal of chief constables see PARA 179 ante.
- 5 As to the appointment and removal of deputy chief constables see PARA 180 ante.
- 6 As to the appointment and removal of assistant chief constables see PARA 181 ante.
- 7 Police Act 1996 s 13(1) (amended by the Criminal Justice and Police Act 2001 ss 123(2)(a), 125(2)). Subject to the specific provisions relating to the metropolitan police force (see the text to notes 9-16 infra) and the City of London Police (see the text to notes 18-20 infra), the ranks of a police force are known by the following designations: chief constable; deputy chief constable; assistant chief constable; chief superintendent; superintendent; chief inspector; inspector; sergeant; constable: Police Regulations 2003, SI 2003/527, reg 4(1) (amended by SI 2006/594). As to the office of constable see PARA 101 et seq ante.
- 8 Police Act 1996 s 13(3). Such appointments are to be made in accordance with regulations under s 50 (as amended) (see PARA 228 ante): s 13(3). As to such regulations see PARA 232 et seq post.
- 9 As to the metropolitan police force see PARA 137 ante.
- 10 Police Act 1996 s 9H(1) (s 9H added by the Greater London Authority Act 1999 s 322). The regulations referred to are regulations under the Police Act 1996 s 50 (as amended): see note 16 infra; and PARA 228 ante.
- 11 Ibid s 9H(2)(a) (as added: see note 10 supra). As to the appointment and removal of the Metropolitan Police Commissioner see PARAS 183, 185 ante.
- 12 Ibid s 9H(2)(b) (as added: see note 10 supra). As to the appointment and removal of the deputy metropolitan police commissioner see PARAS 184-185 ante.
- 13 Ibid s 9H(2)(c) (as added: see note 10 supra). As to assistant metropolitan police commissioners see PARA 186 ante.
- 14 Ibid s 9H(2)(ca) (s 9H as added: see note 10 supra; and s 9H(2)(ca) added by the Criminal Justice and Police Act 2001 s 122(2)). As to deputy assistant metropolitan police commissioners see PARA 186 ante.
- 15 Police Act 1996 s 9H(2)(d) (as added: see note 10 supra). As to commanders see PARA 186 ante.
- 16 Ibid s 9H(2) (as added (see note 10 supra); and amended by the Criminal Justice and Police Act 2001 s 125(1)). The ranks of the metropolitan police force are known by the following designations: Metropolitan Police Commissioner; deputy metropolitan police commissioner; assistant metropolitan police commissioner; deputy assistant metropolitan police commissioner; commander; chief superintendent; superintendent; chief inspector; inspector; sergeant; and constable: Police Regulations 2003, SI 2003/527, reg 4(2).
- 17 Police Act 1996 s 9H(3) (as added: see note 10 supra). Such appointments are to be made in accordance with regulations under s 50 (as amended) (see PARA 228 ante): s 9H(3) (as so added). As to such regulations see PARA 232 et seq post.
- 18 As to the City of London police force see PARA 138 ante.
- 19 As to the City of London Police Commissioner see PARA 187 ante.
- 20 Police Regulations 2003, SI 2003/527, reg 4(3).
- 21 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.
- 22 'The representative bodies' means the Police Federation for England and Wales and all bodies for the time being recognised by the Secretary of State for the purposes of the Police Act 1996 s 64 (as amended) (see PARA 426 post): Police Regulations 2003, SI 2003/527, reg 3(1). As to the Police Federation see PARA 423 post. As to the Secretary of State see PARA 107 note 15 ante.
- 23 Ibid reg 5(1) (amended by SI 2006/594). A person appointed to perform part-time service includes a person appointed to share a job with another person: Police Regulations 2003, SI 2003/527, reg 5(2). In relation to persons appointed under reg 5 (as amended) to perform part-time service: (1) reg 12 (see PARA 234 post) has

effect as if the words 'other than such a member who transferred to the force from another police force having completed the required period of probation therein' were omitted (reg 5(7)(a)); and (2) reg 25 (see PARA 398 post) has effect as if in reg 25(1) for all the words after 'compensated in respect of time' there were substituted 'spent on duty in excess of such period as the Secretary of State may determine' (reg 5(7)(b)(i)) and as if reg 25(2) were omitted (reg 5(7)(b)(ii)).

24 'Full-time member' means a member appointed otherwise than under *ibid* reg 5 (as amended): reg 5(6).

25 *Ibid* reg 5(3).

26 *Ibid* reg 5(5).

27 For the meaning of 'writing' see PARA 115 note 9 ante.

28 For the meaning of 'month' see PARA 140 note 17 ante.

29 For the meaning of 'police authority' see PARA 139 note 1 ante.

30 Police Regulations 2003, SI 2003/527, reg 5(4)(a).

31 *Ibid* reg 5(4)(b).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(1) IN GENERAL/231. Co-operation between forces.

### **231. Co-operation between forces.**

If it appears to the chief officers of police<sup>1</sup> of two or more police forces<sup>2</sup> that any police functions<sup>3</sup> can more efficiently or effectively be discharged by members of those forces<sup>4</sup> acting jointly, they may, with the approval of the police authorities<sup>5</sup> which maintain those forces, make an agreement for that purpose<sup>6</sup>. Similarly, if it appears to any two or more police authorities that there is advantage in any premises, equipment or other material or facilities being provided by them jointly for their forces, they may make an agreement for that purpose<sup>7</sup>. Any such agreement<sup>8</sup> may be varied or determined by a subsequent agreement<sup>9</sup>. Any expenditure incurred under an agreement must be borne by the police authorities in such proportions as they may agree or as may, in the absence of agreement, be determined by the Secretary of State<sup>10</sup>. If it appears to the Secretary of State that an agreement<sup>11</sup> should be made, he may, after considering any representations made by the parties concerned, direct them to enter into such an agreement as may be specified in the direction<sup>12</sup>.

The provisions above do not prejudice the power of a police authority to act jointly, or co-operate in any other way, with any person<sup>13</sup> where to do so is calculated to facilitate, or is conducive or incidental to, the discharge of any of the authority's functions<sup>14</sup>.

The chief officer of police of any police force may, on the application of the chief officer of police of any other police force, provide constables or other assistance for the purpose of enabling the other force to meet any special demand on its resources<sup>15</sup>. Where such satisfactory arrangements for mutual aid cannot be made, or cannot be made in time, and it appears to the Secretary of State expedient in the interests of public safety or order that any police force should be reinforced or should receive other assistance for the purpose of enabling it to meet any special demand on its resources, he may direct the chief officer of police of any police force to provide such constables or other assistance for that purpose as may be specified in the direction<sup>16</sup>. While a constable is provided under these provisions<sup>17</sup> for the assistance of another police force, he is<sup>18</sup> under the direction and control of the chief officer of police of that other force<sup>19</sup>; and while a person employed by a police authority<sup>20</sup> solely to assist the police force maintained by that authority is provided under these provisions for the assistance of

another police force, he is under the direction and control of the chief officer of police of that other force<sup>21</sup>.

The police authority maintaining a police force for which assistance is provided<sup>22</sup> must pay to the police authority maintaining the force from which that assistance is provided such contribution as may be agreed upon between those authorities or, in the absence of any such agreement, as may be provided by any agreement subsisting at the time between all police authorities generally, or, in the absence of such general agreement, as may be determined by the Secretary of State<sup>23</sup>.

There are corresponding provisions governing mutual aid between police forces in England and Wales, and Scotland and Northern Ireland<sup>24</sup>, and aid to police forces by the Serious Organised Crime Agency<sup>25</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 The reference in the Police Act 1996 s 23(1) to police functions includes a reference to functions with respect to training and the provision of opportunities for professional development: s 23(6)(b) (s 23(6) substituted by the Criminal Justice and Police Act 2001 s 99). As to police training generally see PARAS 243-244 post.

4 The reference in the Police Act 1996 s 23(1) to members of a police force includes a reference to special constables appointed for the area for which that force is maintained: s 23(6)(a) (as substituted: see note 3 supra). As to special constables see PARAS 108-112 ante. For the meaning of 'police area' see PARA 136 note 2 ante.

5 For the meaning of 'police authority' see PARA 139 note 1 ante.

6 Police Act 1996 s 23(1). For the purposes of s 23 (as amended): (1) the British Transport Police Force and the Civil Nuclear Constabulary are treated as if they were police forces (see s 23(7A)(a), (7B)(a) (s 23(7A) added by the Anti-terrorism, Crime and Security Act 2001 s 101, Sch 7 paras 20, 21; Police Act 1996 s 23(7B) added by the Energy Act 2004 s 69(1), Sch 14 para 7)); (2) the and the chief constables of those forces are treated as if they were the chief officer of police of those forces (Police Act 1996 s 23(7A)(b), (7B)(b) (as so added)); (3) 'police functions' include the functions of those forces (s 23(7A)(c), (7B)(c) (as so added)); and (4) the British Transport Police Authority and the Civil Nuclear Police Authority are treated as if they were police authorities (see s 23(7A)(d), (7B)(d) (as so added; and s 23(7A)(d) substituted by the British Transport Police (Transitional and Consequential Provisions) Order 2004, SI 2004/1573, art 12(4)(a))). In the case of the British Transport Police Authority, it is treated as if it were the police authority for the purposes of the Police Act 1996 s 23(1), (2), (3) and (7) (see the text to notes 7, 10, 13-14 infra): see s 23(7A)(d) (as so added and substituted). As to the British Transport Police Force see PARA 129 ante. As to the Civil Nuclear Constabulary see PARA 128 ante.

7 Ibid s 23(2).

8 Ie under ibid s 23(1), (2): see the text to notes 1-7 supra.

9 Ibid s 23(4).

10 Ibid s 23(3). As to the Secretary of State see PARA 107 note 15 ante.

11 Ie under ibid s 23(1), (2) or (4): see the text to notes 1-9 supra.

12 Ibid s 23(5).

13 For the meaning of 'person' see PARA 110 note 6 ante.

14 Police Act 1996 s 23(7). As to the functions of police authorities see PARA 156 et seq ante. As to the interpretation of a similar provision in relation to local government see LOCAL GOVERNMENT vol 69 (2009) PARA 462. As to the power of police authorities to accept gifts and loans see PARA 219 ante.

15 Ibid s 24(1). Section 24 applies in relation to the British Transport Police Authority, the British Transport Police Force and the chief constable of that force as it applies to a police authority, a police force and a chief officer of police respectively: s 24(4A) (added by the Anti-terrorism, Crime and Security Act 2001 Sch 7 paras

20, 22; and substituted by the British Transport Police (Transitional and Consequential Provisions) Order 2004, SI 2004/1573, art 12(4)(b)).

16 Police Act 1996 s 24(2).

17 *Ie* under *ibid* s 24 (as amended).

18 *Ie* notwithstanding *ibid* s 9A(1) (as added) (see PARA 137 ante) and s 10(1) (see PARA 178 ante).

19 *Ibid* s 24(3) (amended by the Police and Justice Act 2006 s 2, Sch 2 para 22). In relation to the application of these provisions to the British Transport Police Force (see note 15 supra), the reference in the Police Act 1996 s 24(3) (as amended) to s 10(1) must be construed as including a reference to the Railways and Transport Safety Act 2003 s 24(2) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 283); Police Act 1996 s 24(4A) (as added and substituted: see note 15 supra). As to the liability of the controlling chief officer of police for wrongful acts by an aiding constable see s 88 (as amended); and PARA 105 ante.

20 *Ie* under *ibid* s 15 (as amended): see PARA 168 ante.

21 *Ibid* s 24(3A) (added by the Police and Justice Act 2006 s 2, Sch 2 para 17). This is notwithstanding the Police Act 1996 s 15(2) (see PARA 168 ante): s 24(3A) (as so added).

22 *Ie* under *ibid* s 24 (as amended): see the text to notes 15-21 supra.

23 *Ibid* s 24(4).

24 See *ibid* s 98 (as amended); and PARA 429 post.

25 See the Serious Organised Crime and Police Act 2005 ss 23-25; and PARAS 455-456 post.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(i) Appointment, Promotion and Retirement/232. Qualifications for appointment.

## **(2) MEMBERS OF POLICE FORCES**

### **(i) Appointment, Promotion and Retirement**

#### **232. Qualifications for appointment.**

Subject to any provision made by regulations<sup>1</sup> which relates to qualification for appointment as a constable<sup>2</sup> or as a special constable<sup>3</sup> or for membership of, or for particular ranks<sup>4</sup>, offices or positions with, any force or constabulary, a person of any nationality may, irrespective of his place of birth, be a member of, or a special constable with, a police force<sup>5</sup> maintained for any police area<sup>6</sup> in England and Wales<sup>7</sup>.

A candidate for appointment to a police force<sup>8</sup>:

- 54 (1) must, if not a national of a member state<sup>9</sup>, Norway, Iceland or Liechtenstein, have leave to enter or remain in the United Kingdom<sup>10</sup> for an indefinite period<sup>11</sup>;
- 55 (2) must produce satisfactory references as to character and if he has served in any police force, in the armed forces<sup>12</sup>, in the civil service<sup>13</sup> or as a seaman<sup>14</sup>, produce satisfactory proof of his good conduct while so serving<sup>15</sup>;
- 56 (3) must have attained the age of 18 years<sup>16</sup>;
- 57 (4) must be certified by a registered medical practitioner<sup>17</sup> approved by the police authority<sup>18</sup> to be in good health, of sound constitution and fitted both physically and mentally to perform the duties on which he will be employed after appointment<sup>19</sup>;



- 58 (5) must meet the standard of eyesight determined by the Secretary of State<sup>20</sup>;
- 59 (6) must, if a candidate for appointment in the rank of constable, satisfy the chief officer of police<sup>21</sup> that he is sufficiently competent in written and spoken English, and sufficiently numerate, by passing such assessments in written and spoken English, and numeracy, as may be approved by the Secretary of State<sup>22</sup>;
- 60 (7) must, if a candidate for appointment in the rank of sergeant or inspector, be qualified for promotion to such rank in accordance with the provisions of the promotion regulations<sup>23</sup>;
- 61 (8) must give such information as may be required as to his previous history or employment or any other matter relating to his appointment to the police force<sup>24</sup>;
- 62 (9) must, unless he is applying to transfer to the force from another police force, on being so required by the chief officer of police of the force to which he is a candidate for appointment give a sample of saliva or urine to be tested in accordance with procedures determined by the Secretary of State for evidence of such controlled drugs as the Secretary of State may determine<sup>25</sup>.

Save in so far as the chief officer of police may allow at the request of the candidate concerned, a person is not eligible for appointment to a police force if he or a relative included in his family has a business interest incompatible with membership of a police force<sup>26</sup>.

1 The regulations made under the Police Act 1996 s 50 (as amended) (see the text to notes 8-26 *infra*; and PARAS 228 *ante*, 233 *post*) or s 51 (as amended) (see PARA 110 *ante*).

2 As to the office of constable see PARA 101 *et seq ante*.

3 As to special constables see PARAS 108-112 *ante*.

4 As to ranks see PARA 230 *ante*.

5 For the meaning of 'police force' see PARA 102 note 11 *ante*.

6 For the meaning of 'police area' see PARA 136 note 2 *ante*.

7 See the Police Reform Act 2002 s 82(1), (2), (3) (all as amended); and PARA 102 *ante*.

8 A candidate for appointment to a police force must be given a notice in terms approved by the Secretary of State, drawing attention to the terms and conditions of service which are contained therein: Police Regulations 2003, SI 2003/527, reg 10(2). As to the Secretary of State see PARA 107 note 15 *ante*.

9 For the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; and see the European Communities Act 1972 s 1(2), Sch 1 Pt II.

10 For the meaning of 'United Kingdom' see PARA 102 note 7 *ante*.

11 Police Regulations 2003, SI 2003/527, reg 10(1)(a) (substituted by SI 2005/2834). As to leave to enter or remain in the United Kingdom see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 86.

12 'Armed forces' means the naval, military or air forces of the Crown including any women's service administered by the Defence Council: Police Regulations 2003, SI 2003/527, reg 10(3)(a). As to the armed forces see ARMED FORCES. As to the Defence Council see ARMED FORCES vol 2(2) (Reissue) PARA 2; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 443-447.

13 As to the civil service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 549 *et seq*.

14 'Seaman' has the same meaning as in the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 424): Police Regulations 2003, SI 2003/527, reg 10(3)(b).

15 *Ibid* reg 10(1)(b).

16 *Ibid* reg 10(1)(c) (amended by SI 2006/2278).

17 For the meaning of 'registered medical practitioner' see PARA 115 note 5 *ante*.

- 18 For the meaning of 'police authority' see PARA 139 note 1 ante.
- 19 Police Regulations 2003, SI 2003/527, reg 10(1)(d).
- 20 Ibid reg 10(1)(e).
- 21 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.
- 22 Police Regulations 2003, SI 2003/527, reg 10(1)(f).
- 23 Ibid reg 10(1)(g). 'Promotion regulations' means the regulations relating to qualification and selection for promotion from time to time in force under the Police Act 1996 s 50 (as amended) (see PARA 228 ante); Police Regulations 2003, SI 2003/527, reg 3(1). As to the promotion regulations see the Police (Promotion) Regulations 1996, SI 1996/1685; and PARAS 236-238 post.
- 24 Police Regulations 2003, SI 2003/527, reg 10(1)(h).
- 25 Ibid reg 10(1)(i) (added by SI 2005/2834). As to controlled drugs see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 237 et seq. As to the personal record of a member of a police force see PARA 395 post.
- 26 Police Regulations 2003, SI 2003/527, reg 9(1). In its application to a candidate for appointment as chief officer of police, deputy chief constable or assistant chief constable, reg 9(1) has effect as if for any reference to the chief officer of police there were substituted a reference to the police authority: reg 9(2). For the meaning of 'business interest' see PARA 394 note 2 post.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(i) Appointment, Promotion and Retirement/233. Appointment of senior officers.

### **233. Appointment of senior officers.**

Subject as provided<sup>1</sup>, no person may be appointed as a chief constable<sup>2</sup> of a police force<sup>3</sup> unless he holds or has held such rank<sup>4</sup> and for such period as the Secretary of State<sup>5</sup> determines in respect of such appointments<sup>6</sup>. An appointment to the rank of: (1) chief constable or deputy chief constable<sup>7</sup> in a police force<sup>8</sup> in England and Wales<sup>9</sup>; (2) Metropolitan Police Commissioner<sup>10</sup>, deputy metropolitan police commissioner<sup>11</sup>, assistant metropolitan police commissioner or deputy assistant metropolitan police commissioner<sup>12</sup> in the metropolitan police force<sup>13</sup>; or (3) assistant City of London police commissioner<sup>14</sup>, must be for a fixed term<sup>15</sup>. The Secretary of State must determine the circumstances in which a vacancy in a rank specified in heads (1) to (3) above, or the rank of assistant chief constable in a police force in England and Wales<sup>16</sup>, or commander in the metropolitan police force<sup>17</sup> or City of London police force, must be advertised<sup>18</sup>.

- 1 Ie subject to the Police Act 1996 s 11(1) (see PARA 179 ante) and the Police Regulations 2003, SI 2003/527, regs 9, 10 (as amended) (see PARA 232 ante).
- 2 As to the appointment of chief constables see PARA 179 ante.
- 3 For the meaning of 'police force' see PARA 102 note 11 ante.
- 4 As to ranks see PARA 230 ante.
- 5 As to the Secretary of State see PARA 107 note 15 ante.
- 6 Police Regulations 2003, SI 2003/527, reg 11(1).
- 7 As to the appointment of deputy chief constables see PARA 180 ante.
- 8 Ie a police force maintained under the Police Act 1996 s 2: see PARA 136 ante.

9 Police Regulations 2003, SI 2003/527, reg 11(2)(a) (reg 11(2) substituted, and reg 11(2A), (2B) added, by SI 2006/1467).

10 As to the appointment of the Metropolitan Police Commissioner see PARA 183 ante.

11 As to the appointment of the deputy metropolitan police commissioner see PARA 184 ante.

12 As to the appointment of assistant metropolitan police commissioners and deputy assistant metropolitan police commissioners see PARA 186 ante.

13 Police Regulations 2003, SI 2003/527, reg 11(2)(b) (as substituted: see note 9 supra). As to the metropolitan police force see PARA 137 ante.

14 Ibid reg 11(2)(c) (as substituted: see note 9 supra). As to the assistant City of London police commissioner see PARA 230 ante. As to the City of London police force see PARA 138 ante.

15 Ibid reg 11(2) (as substituted: see note 9 supra). An appointment for a fixed term must be for a maximum of five years: reg 11(2A) (as added: see note 9 supra). However, an appointment for a fixed term may be extended, by agreement of the police authority and the person appointed, for a further term of a maximum of three years and for subsequent terms each of a maximum of one year, provided that any extension or subsequent extension which is due to expire more than one year after the expiry of the original fixed term requires the consent of the Secretary of State: reg 11(2B) (as so added). Regulation 11(2) (as substituted) is without prejudice to any provision whereby a term of appointment comes to an end on promotion, dismissal, the conclusion of disciplinary proceedings or transfer to another police force and to reg 14 (retirement: see PARA 239 post): reg 11(3). For the meaning of 'police authority' see PARA 139 note 1 ante.

16 Is a police force maintained under the Police Act 1996 s 2: see PARA 136 ante. As to the appointment of assistant chief constables see PARA 181 ante.

17 As to the appointment of commanders in the metropolitan police force see PARA 186 ante.

18 Police Regulations 2003, SI 2003/527, reg 11(4) (amended by SI 2006/1467). If a vacancy is to be advertised, the advertisement must contain such detail and be published in such manner as the Secretary of State may determine. The Secretary of State may determine that no appointment may be made until after a date to be specified in the advertisement: Police Regulations 2003, SI 2003/527, reg 11(4).

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### **234. Probation in the rank of constable.**

A member of a police force<sup>1</sup> appointed in the rank of constable<sup>2</sup>, other than such a member who transferred to the force from another police force having completed the required period of probation therein, is on probation for such period as the Secretary of State<sup>3</sup> determines<sup>4</sup> in respect of such appointments<sup>5</sup>.

During his period of probation in the force the services of a constable may be dispensed with at any time if the chief officer of police considers that he is not fitted, physically or mentally, to perform the duties of his office, or that he is not likely to become an efficient or well conducted constable<sup>6</sup>. A constable whose services are so dispensed with is entitled to receive a month's<sup>7</sup> notice or a month's pay in lieu thereof<sup>8</sup>. A constable's services may not be so dispensed with and any notice given for the purposes thereof ceases to have effect if he gives written notice to the police authority<sup>10</sup> of his intention to retire and retires in pursuance of the said notice on or before the date on which his services would otherwise be dispensed with<sup>11</sup>. Where a constable has received a notice that his services are to be dispensed with and he gives written notice of his intention to retire and retires<sup>12</sup>, he is nevertheless entitled to receive pay up to and until the date on which the month's notice he has received would have expired; or where he

has received or is due to receive a month's pay in lieu of notice he remains entitled to that pay notwithstanding the notice he has given<sup>13</sup>.

1 'Member of a police force' includes such a member who is suspended under the conduct regulations; 'conduct regulations' means the regulations relating to conduct from time to time in force under the Police Act 1996 s 50 (as amended) (see PARA 228 ante); Police Regulations 2003, SI 2003/527, reg 3(1). As to the conduct regulations generally see PARA 245 et seq post; and as to suspension under those regulations see PARA 249 post. For the meaning of 'police force' see PARA 102 note 11 ante.

2 As to ranks see PARA 230 ante. As to the office of constable see PARA 101 et seq ante.

3 As to the Secretary of State see PARA 107 note 15 ante.

4 In making such a determination, the Secretary of State may, subject to the Police Regulations 2003, SI 2003/527, reg 12(3), confer on the chief officer of police discretion to determine the required period of probation in a particular case: reg 12(2). For the purposes of such a determination, the periods to be counted or disregarded in reckoning service must be such as may be determined by the Secretary of State: reg 12(3). For the meaning of 'chief officer of police' see PARA 105 note 7 ante. It was held that a chief officer's discretion to extend a probationary period under previous regulations could be delegated to an assistant chief constable: see *R v Chief Constable of Greater Manchester Police, ex p Lainton* [2000] ICR 1324, (2000) Times, 4 April, CA.

5 Police Regulations 2003, SI 2003/527, reg 12(1).

6 Ibid reg 13(1). This provision is expressed to be subject to the other provisions of reg 13; see the text to notes 7-13 infra. The chief officer's discretion is qualified, not absolute, and he must observe the rules of natural justice and give the probationer an opportunity to answer any allegations against him: see *Chief Constable of the North Wales Police v Evans* [1982] 3 All ER 141, [1982] 1 WLR 1155, HL. The power to dispense with a probationer's services can not be delegated by the chief officer: see *Chief Constable of North Wales Police v Evans* supra; *R v Chief Constable of Greater Manchester Police, ex p Lainton* [2000] ICR 1324, (2000) Times, 4 April, CA. See also *R v Chief Constable of British Transport Police, ex p Farmer* [1999] COD 518.

7 For the meaning of 'month' see PARA 140 note 17 ante.

8 Police Regulations 2003, SI 2003/527, reg 13(2).

9 For the meaning of 'written' see PARA 115 note 9 ante.

10 For the meaning of 'police authority' see PARA 139 note 1 ante.

11 Police Regulations 2003, SI 2003/527, reg 13(3). Such a notice taking effect on that date must be accepted by the police authority notwithstanding that less than a month's notice is given: reg 13(3).

12 Ie under ibid reg 13(3): see the text to notes 9-11 supra.

13 Ibid reg 13(4).

## UPDATE

### 234 Probation in the rank of constable

TEXT AND NOTE 6--'Efficient' should be given its ordinary meaning, and the chief officer must seek relevant views from as many sources as possible before deciding, having given the claimant the opportunity to make representations, the weight to give each piece of information: *R (on the application of Verity) v Chief Constable of North Yorkshire Police* [2009] EWHC 1879 (Admin), [2009] All ER (D) 265 (Jul). *R v Chief Constable of Greater Manchester, ex p Lainton*, cited, followed in *R (on the application of Austin) v Chief Constable of Surrey Police* [2010] EWHC 266 (Admin), [2010] All ER (D) 202 (Feb).

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### **235. Probation in the rank of sergeant.**

A member of a police force<sup>1</sup> who is promoted to<sup>2</sup> the rank of sergeant<sup>3</sup> is on probation in that rank for a period of one year or for such longer period as the chief officer of police<sup>4</sup> may determine in the circumstances of the particular case<sup>5</sup>. If the chief officer of police considers that a person who is on probation in the rank of sergeant is unlikely to perform the duties of that rank satisfactorily he may reduce him to the rank of constable<sup>6</sup>.

1 'Member of a police force' includes such a member who is suspended from membership of his force and the office of constable under regulations made by virtue of the Police Act 1996 s 50 (as amended) (see PARA 228 ante): Police (Promotion) Regulations 1996, SI 1996/1685, reg 2(1) (definition amended by SI 2003/2595). As to suspension from membership of a police force see PARA 249 post. In the Police (Promotion) Regulations 1996, SI 1996/1685 (as amended), unless the context otherwise requires, any reference to a member of a police force includes a reference to a reversionary member, that is to say a reversionary member of a home police force, or a central police officer, within the meaning of the Police Pensions Regulations 1987, SI 1987/257 (as amended) (see PARA 408 post); any reference to service includes a reference to service as a reversionary member; and any reference to a constable or a sergeant includes a reference to a reversionary member entitled under the Police Act 1996 s 97(3) (see PARA 428 post) to revert to a police force in the rank in question: Police (Promotion) Regulations 1996, SI 1996/1685, reg 2(2) (amended by SI 2003/2395; SI 2006/594). For the meaning of 'police force' see PARA 102 note 11 ante. As to the office of constable see PARA 101 et seq ante.

2 Police (Promotion) Regulations 1996, SI 1996/1685, reg 5(1)(a) (reg 5(1) amended by SI 2003/2595; SI 2006/594). As to promotion see PARA 236 post.

3 As to ranks see PARA 230 ante.

4 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

5 Police (Promotion) Regulations 1996, SI 1996/1685, reg 5(1) (as amended: see note 2 supra). This provision is expressed to be subject to reg 5(2) (as amended): see the text to note 6 infra. Regulation 5 (as amended) does not apply to a person who is completing the work-based assessment under Part IIB of the qualifying assessment: reg 5(3) (added by SI 2005/178). For the meaning of 'qualifying assessment' see PARA 236 note 4 post.

6 Police (Promotion) Regulations 1996, SI 1996/1685, reg 5(2) (amended by SI 2003/2595; SI 2006/594).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(i) Appointment, Promotion and Retirement/236. Promotion.

### **236. Promotion.**

Promotion from one rank<sup>1</sup> to another rank is by selection<sup>2</sup>. A constable<sup>3</sup> is qualified for promotion to the rank of sergeant if he: (1) has obtained a pass in the qualifying assessment<sup>4</sup> for promotion to the rank of sergeant<sup>5</sup>; (2) has completed two years' service<sup>6</sup>; and (3) has completed his probationary service<sup>7</sup>. A sergeant is qualified for promotion to the rank of inspector if he: (a) has obtained a pass in the qualifying assessment for promotion to the rank of inspector<sup>8</sup>; and (b) has completed two years service, or in the case of a sergeant participating in the HPD scheme<sup>9</sup>, one year's service, in the rank of sergeant<sup>10</sup>.

1 As to ranks see PARA 230 ante.

2 Police (Promotion) Regulations 1996, SI 1996/1685, reg 4. This provision is expressed to be subject to reg 7 (as substituted and amended): see PARA 237 post. Decisions as to promotion will only be interfered with on an application for judicial review in the most exceptional circumstances, if ever: see *R (on the application of Tucker) v Director General of the National Crime Squad* [2003] EWCA Civ 57, [2003] ICR 599, [2003] IRLR 439; *R (on the application of Morgan) v Chief Constable of South Wales* [2001] EWHC Admin 262, [2001] All ER (D) 84 (Apr). As to judicial review in disciplinary proceedings see PARA 315 post. As to judicial review generally see CIVIL PROCEDURE vol 12 (2009) PARA 1530 et seq; JUDICIAL REVIEW.

3 As to the office of constable see PARA 101 et seq ante.

4 'Qualifying assessment' means: (1) an examination held in accordance with the Police (Promotion) Regulations 1996, SI 1996/1685, reg 3(8), Sch 1 (as amended) (reg 3(7)(a) (reg 3(7) amended by SI 2003/2595; SI 2005/178; SI 2006/594)); (2) an examination held in accordance with any previous regulations about promotion which have been made under the Police Act 1996 s 50 (as amended) (see PARA 228 ante) and which were in force at the time of the examination in question (Police (Promotion) Regulations 1996, SI 1996/1685, reg 3(7)(b) (as so amended)); and (3) an examination recognised under reg 3(9), Sch 2 (reg 3(7)(c) (as so amended)).

5 Ibid reg 3(1)(a) (amended by SI 2005/178).

6 Police (Promotion) Regulations 1996, SI 1996/1685, reg 3(1)(b). Previous service in a Scottish force, the Police Service of Northern Ireland, the Isle of Man Constabulary, or the British Airports Authority Constabulary if the service terminated with transfer to a police force by an order under the Aviation Security Act 1982 s 30 (as amended) (see AIR LAW vol 2 (2008) PARA 324), counts for the purposes of head (2) in the text, and if it constituted probationary service in the force or constabulary in question, for the purposes of head (3) in the text, and such service in the rank of sergeant counts for the purposes of head (b) in the text: Police (Promotion) Regulations 1996, SI 1996/1685, reg 3(3) (amended by the Police (Northern Ireland) Act 2000 s 78(2)(f)). As to reckoning service or a period in any rank see the Police (Promotion) Regulations 1996, SI 1996/1685, reg 2(3) (amended by SI 2002/767; SI 2003/2595; SI 2006/594). For the meaning of 'police force' see PARA 102 note 11 ante.

7 Police (Promotion) Regulations 1996, SI 1996/1685, reg 3(1)(c). 'Probationary service', in relation to a constable who completed the required period of probation following a previous appointment, does not include any period of probation following his latest appointment: reg 2(1). Previous service in: (1) the Port of Tilbury Constabulary; (2) the Port of Liverpool Constabulary; (3) the States of Jersey Police; (4) the Royal Parks Constabulary; (5) the Ministry of Defence Police; (6) the British Transport Police; or (7) the Dover Harbour Board Police, which constituted probationary service in the body in question counts for the purposes of reg 3(1)(c): reg 3(4). See also note 6 supra. As to probationary service see PARAS 234-235 ante. As to the Ministry of Defence Police see PARA 120 et seq ante; and as to the British Transport Police see PARA 129 ante.

8 Ibid reg 3(2)(a) (amended by SI 2005/178).

9 For the meaning of 'HPD scheme' see PARA 237 note 4 post.

10 Police (Promotion) Regulations 1996, SI 1996/1685, reg 3(2)(b) (amended by SI 2002/767). See also note 6 supra. As to probation in the rank of sergeant see PARA 235 ante.

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### **237. Promotion under HPD scheme.**

A constable<sup>1</sup> who is qualified<sup>2</sup> for promotion to the rank of sergeant<sup>3</sup> and is participating in the HPD scheme<sup>4</sup> must be promoted to the rank of sergeant as soon as the chief officer of police<sup>5</sup> determines that he is competent to perform the duties of a sergeant<sup>6</sup>. A sergeant who is qualified<sup>7</sup> for promotion to the rank of inspector<sup>8</sup> and is participating in the HPD scheme<sup>9</sup> must be promoted to the rank of inspector as soon as the chief officer of police determines that he is competent to perform the duties of an inspector<sup>10</sup>. An inspector who is participating in the HPD scheme must be promoted to the rank of chief inspector as soon as the chief officer of police determines that he is competent to perform the duties of a chief inspector<sup>11</sup>.

Promotion under these provisions<sup>12</sup> relating to the HPD scheme takes place whether or not there is a vacancy for the rank in question<sup>13</sup>, and does not affect any existing or subsequent vacancy unless the person promoted is designated to fill it<sup>14</sup>.

1 As to the office of constable see PARA 101 et seq ante.

2 Ie under the Police (Promotion) Regulations 1996, SI 1996/1685, reg 3 (as amended): see PARA 236 ante.

3 Ibid reg 7(1)(a) (reg 7 substituted by SI 2002/767). As to ranks see PARA 230 ante.

4 Police (Promotion) Regulations 1996, SI 1996/1685, reg 7(1)(b) (as substituted: see note 3 supra). 'HPD scheme' means a scheme for the time being recognised by the Secretary of State for the purposes of the Police (Promotion) Regulations 1996, SI 1996/1685 (as amended) as the high potential development scheme: reg 2(1) (definition added by SI 2002/767). As to the Secretary of State see PARA 107 note 15 ante.

5 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

6 Police (Promotion) Regulations 1996, SI 1996/1685, reg 7(1) (reg 7 as substituted (see note 3 supra); and reg 7(1) amended by SI 2003/2595; SI 2006/594).

7 Ie under the Police (Promotion) Regulations 1996, SI 1996/1685, reg 3 (as amended): see PARA 236 ante.

8 Ibid reg 7(2)(a) (as substituted: see note 3 supra).

9 Ibid reg 7(2)(b) (as substituted: see note 3 supra).

10 Ibid reg 7(2) (reg 7 as substituted (see note 3 supra); and reg 7(2) amended by SI 2003/2595; SI 2006/594).

11 Police (Promotion) Regulations 1996, SI 1996/1685, reg 7(3) (reg 7 as substituted (see note 3 supra); and reg 7(3) amended by SI 2003/2595; SI 2006/594).

12 Ie under the Police (Promotion) Regulations 1996, SI 1996/1685, reg 7(1), (2), (3) (as substituted and amended): see the text to notes 1-11 supra.

13 Ibid reg 7(4)(a) (as substituted: see note 3 supra).

14 Ibid reg 7(4)(b) (as substituted: see note 3 supra).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(i) Appointment, Promotion and Retirement/238. Temporary promotion.

### **238. Temporary promotion.**

A member of a police force<sup>1</sup> who is required to perform the duties of a higher rank<sup>2</sup> may, even if there is no vacancy for that rank, be promoted temporarily to it, but in the case of promotion to the rank of sergeant or inspector only if he is qualified<sup>3</sup> for the promotion<sup>4</sup>.

A member of a police force who is successful in the written paper of the qualifying assessment<sup>5</sup>, and who has commenced the period of work-based assessment<sup>6</sup>, must, at the commencement of the work-based assessment, be temporarily promoted to the rank of sergeant or inspector as the case may be<sup>7</sup>.

1 For the meaning of 'member of a police force' see PARA 235 note 1 ante.

2 As to ranks see PARA 230 ante.

3 Ie under the Police (Promotion) Regulations 1996, SI 1996/1685, reg 3 (as amended): see PARA 236 ante.

- 4 Ibid reg 6(1) (renumbered by SI 2005/178; and amended by SI 2003/2595, SI 2006/594).
- 5 le under Part I of the qualifying assessment. For the meaning of 'qualifying assessment' see PARA 236 note 4 ante.
- 6 le under Part IIB of the qualifying assessment.
- 7 Police (Promotion) Regulations 1996, SI 1996/1685, reg 6(2) (added by SI 2005/178).

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### **239. Voluntary retirement.**

Members of a police force<sup>1</sup> may retire in such circumstances as are determined by the Secretary of State<sup>2</sup>, and in making such a determination the Secretary of State may: (1) require such notice of intention to retire as may be specified in the determination, or such shorter notice as may have been accepted by the police authority<sup>3</sup>, to be given to that authority<sup>4</sup>; (2) require the consent of the chief officer of police<sup>5</sup> to be obtained before giving such notice<sup>6</sup>.

- 1 For the meaning of 'member of a police force' see PARA 234 note 1 ante.
- 2 As to the Secretary of State see PARA 107 note 15 ante.
- 3 For the meaning of 'police authority' see PARA 139 note 1 ante.
- 4 Police Regulations 2003, SI 2003/527, reg 14(a).
- 5 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.
- 6 Police Regulations 2003, SI 2003/527, reg 14(b).

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### **240. Compulsory retirement on grounds of age.**

Under the 1987 police pension scheme<sup>1</sup>, every regular policeman<sup>2</sup> who is not a member of the metropolitan police<sup>3</sup> or an overseas policeman<sup>4</sup> is required to retire: (1) if he is the City of London Police Commissioner or assistant City of London police commissioner, a commander in the City of London police force<sup>5</sup>, a chief constable<sup>6</sup>, a deputy chief constable<sup>7</sup> or an assistant chief constable<sup>8</sup>, on attaining the age of 65 years<sup>9</sup>; (2) if he is a superintendent or inspector<sup>10</sup>, on attaining the age of 60 years<sup>11</sup>; (3) if he is a sergeant or constable, on attaining the age of 55 years<sup>12</sup>. Every regular policeman who is a member of the metropolitan police is required to retire: (a) if he is the Metropolitan Police Commissioner, deputy metropolitan police commissioner or an assistant metropolitan police commissioner<sup>13</sup>, on attaining the age of 60 years<sup>14</sup>; (b) if he is a deputy assistant metropolitan police commissioner or commander, on attaining the age of 57 years<sup>15</sup>; (c) if he holds any lower rank, on attaining the age of 55 years<sup>16</sup>.



Under the 2006 police pension scheme<sup>17</sup>, every regular police officer<sup>18</sup> is required to retire: (i) if he is of the rank of constable, sergeant, inspector or chief inspector, on attaining the age of 60 years<sup>19</sup>; (ii) if he holds any higher rank, on attaining the age of 65 years<sup>20</sup>.

Under both schemes, however, the time at which a person may be required to retire may be postponed, if the person concerned holds a rank above that of superintendent, by the police authority<sup>21</sup>; and, if he holds the rank of superintendent or any lower rank, by the chief officer of police<sup>22</sup>.

1     le the scheme created by the Police Pensions Regulations 1987, SI 1987/257 (as amended): see PARA 407 post.

2     Ibid reg A18(1). This provision is expressed to be subject to reg A18(2): see the text to notes 21-22 infra. It also has effect subject to reg J4, Sch J Pt VII paras 5(2), 6(3) (displaced chief constables): reg A18(3). For the meaning of 'regular policeman' see PARA 408 note 8 post.

3     As to the metropolitan police force see PARA 137 ante.

4     For the meaning of 'overseas policeman' see PARA 408 note 4 post.

5     As to the City of London Police Commissioner see PARA 187 ante; and as to the City of London police see PARA 138 ante.

6     As to chief constables see PARA 179 ante.

7     As to deputy chief constables see PARA 180 ante.

8     As to assistant chief constables see PARA 181 ante.

9     Police Pensions Regulations 1987, SI 1987/257, reg A18(1)(a)(i) (substituted by SI 1998/577; and amended SI 2001/3888).

10    As to ranks generally see PARA 230 ante.

11    Police Pensions Regulations 1987, SI 1987/257, reg A18(1)(a)(ii).

12    Ibid reg A18(1)(a)(iii).

13    As to the Metropolitan Police Commissioner see PARA 183 ante; as to the deputy metropolitan police commissioner see PARA 184 ante; and as to assistant metropolitan police commissioners see PARA 186 ante.

14    Police Pensions Regulations 1987, SI 1987/257, reg A18(1)(b)(i) (amended by SI 2000/1549).

15    Police Pensions Regulations 1987, SI 1987/257, reg A18(1)(b)(ii) (amended by SI 1998/577; SI 2001/3888). As to deputy assistant metropolitan police commissioners and commanders see PARA 186 ante.

16    Police Pensions Regulations 1987, SI 1987/257, reg A18(1)(b)(iii).

17    le the scheme created by the Police Pension Regulations 2006, SI 2006/3415: see PARA 407 post.

18    For the meaning of 'regular police officer' see PARA 418 note 4 post.

19    Police Pension Regulations 2006, SI 2006/3415, reg 19(2)(a).

20    Ibid reg 19(2)(b).

21    For the meaning of 'police authority' see PARA 139 note 1 ante.

22    Police Pensions Regulations 1987, SI 1987/257, reg A18(2); Police Pension Regulations 2006, SI 2006/3415, reg 19(3). The Police Pensions Regulations 1987, SI 1987/257, reg A18(2) applies provided that no such postponement or postponements extend beyond five years from the time at which he would have been required to retire under reg A18(1) (as amended) (see the text to notes 1-16 supra): reg A18(2) proviso. For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

## UPDATE

## 240 Compulsory retirement on grounds of age

TEXT AND NOTES--SI 1987/257 reg A18 substituted by SI 2008/1887, and amended by SI 2009/2060.

TEXT AND NOTES 19-22--SI 2006/3415 reg 19(2) amended, reg 19(4) (application to specified employees of SOCA) added: SI 2008/1887.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(i) Appointment, Promotion and Retirement/241. Retirement in the interests of efficiency or effectiveness.

### 241. Retirement in the interests of efficiency or effectiveness.

A police authority in England and Wales<sup>1</sup>, acting with the approval of the Secretary of State<sup>2</sup>, may call upon the chief constable, deputy chief constable or assistant chief constable<sup>3</sup> of the force maintained by it, in the interests of efficiency or effectiveness, to retire or to resign<sup>4</sup>; and the Metropolitan Police Authority<sup>5</sup>, acting with the approval of the Secretary of State, may call upon the Metropolitan Police Commissioner, the deputy metropolitan police commissioner, assistant and deputy assistant metropolitan police commissioners, and commanders<sup>6</sup>, in the interests of efficiency or effectiveness, to retire or to resign<sup>7</sup>. The Secretary of State may require the police authority or the Metropolitan Police Authority to exercise such powers<sup>8</sup>.

A police authority<sup>9</sup> may determine that an officer<sup>10</sup> be required to retire on the grounds of the efficiency of the force<sup>11</sup>.

1 le a police authority of a police force maintained under the Police Act 1996 s 2: see PARA 136 ante.

2 As to the Secretary of State see PARA 107 note 15 ante.

3 As to chief constables see PARA 179 ante; as to deputy chief constables see PARA 180 ante; and as to assistant chief constables see PARA 181 ante.

4 See the Police Act 1996 s 11(2) (as amended), s 11A(3) (as added and amended), s 12(3) (as amended); and PARAS 179-181 ante.

5 As to the Metropolitan Police Authority see PARAS 137, 147 et seq ante.

6 As to the Metropolitan Police Commissioner see PARA 183 ante; as to the deputy metropolitan police commissioner see PARA 184 ante; and as to assistant and deputy assistant metropolitan police commissioners and commanders see PARA 186 ante.

7 See the Police Act 1996 s 9E(1) (as added and amended), s 9E(4) (as added), ss 9F(3), 9FA(3), 9G(3) (all as added and amended); and PARAS 185-186 ante.

8 See *ibid* s 42(1) (as substituted); and PARA 182 ante.

9 For the meaning of 'police authority' see PARA 139 note 1 ante.

10 Under the Police Pensions Regulations 1987, SI 1987/257, this applies to a regular policeman, other than a chief officer of police, deputy chief constable or assistant chief constable, who if required to retire would be entitled to receive a pension of an amount not less than two-thirds of his average pensionable pay or would be entitled to receive a pension of such an amount if it did not fall to be reduced in accordance with the provisions relating to reduction of pension related to up-rating of widow's pension (see reg B1, Sch B Pt VIII) or if he had not made an election not to pay pension contributions under reg G4(1) (as added); reg A19(1) (amended by SI 1990/805). For the meaning of 'regular policeman' see PARA 408 note 8 post. For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

Under the Police Pension Regulations 2006, SI 2006/3415, this applies to a regular police officer of the rank of chief superintendent, superintendent, chief inspector, inspector, sergeant or constable who is entitled to reckon 35 years' pensionable service (or would have been so entitled if he had not made an election not to pay pension contributions): reg 20(1). For the meaning of 'regular police officer' see PARA 418 note 4 post. As to the police pension schemes see PARA 407 post. As to ranks generally see PARA 230 ante.

11 Police Pensions Regulations 1987, SI 1987/257, reg A19(2); Police Pension Regulations 2006, SI 2006/3415, reg 20(2). Under the Police Pensions Regulations 1987, SI 1987/257 (as amended), the officer may be required to retire on such date as the police authority determines: see reg A19(2). Under the Police Pension Regulations 2006, SI 2006/3415, the officer may be required to retire on such date, on or after the date on which he attains the age of 55 years, as the police authority determines: see reg 20(2).

## UPDATE

### 241 Retirement in the interests of efficiency or effectiveness

NOTES 10, 11--SI 2006/3415 amended: SI 2007/1932, SI 2008/1887, SI 2009/2060.

NOTE 10--SI 1987/257 reg A19(1) further amended: SI 2008/1887, SI 2009/2060.

NOTE 11--An officer has the right to be heard about any proposed decision to force him to retire before it is made: *R (on the application of Hodgson) v South Wales Police Authority* [2008] EWHC 1183 (Admin), [2008] All ER (D) 21 (Jun).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(i) Appointment, Promotion and Retirement/242. Retirement on permanent disablement.

### 242. Retirement on permanent disablement.

An officer<sup>1</sup> may be required to retire on the date on which the police authority, having considered all the relevant circumstances, advice and information available to it, determines that he ought to retire on the ground that he is permanently disabled for the performance of his duty<sup>2</sup>. However, such a retirement is void if, after the said date, on an appeal against the medical opinion on which the police authority acted in determining that he ought to retire, it is decided that the appellant is not permanently disabled<sup>3</sup>.

1 Under the Police Pensions Regulations 1987, SI 1987/257 (as amended), this applies to every regular policeman: see reg A20. For the meaning of 'regular policeman' see PARA 408 note 8 post. Under the Police Pension Regulations 2006, SI 2006/3415, this applies to a regular police officer who is permanently disabled for the performance of the ordinary duties of a member of the police force but who, in accordance with a determination of the police authority in the circumstances of his case, continues to serve as such: reg 21(2). The police authority for the force in which such a police officer is serving may consider, at such times as it may in its discretion determine, whether the disablement has ceased, significantly worsened or significantly improved: reg 21(3). If on any such consideration the police authority, having considered all the relevant circumstances, advice and information available to it, determines that the officer ought to retire on the ground that he is permanently disabled for the performance of the ordinary duties of a member of the police force, it must require him to retire: reg 21(4). For the meaning of 'regular police officer' see PARA 418 note 4 post. For the meaning of 'police authority' see PARA 139 note 1 ante.

2 See the Police Pensions Regulations 1987, SI 1987/257, reg A20 (amended by SI 2003/535); and the Police Pension Regulations 2006, SI 2006/3415, reg 21(1) (which refers to disablement 'for the performance of the ordinary duties of a member of the police force'). A police authority has discretion whether to exercise its power and may re-exercise its discretion in light of new information: see *R v Cleveland Police Authority, ex p Rodger* (9 July 1998) Lexis.

In the case of the Police Pension Regulations 2006, SI 2006/3415, where a regular police officer who is permanently disabled for the performance of the ordinary duties of a member of the police force, in accordance with a determination of the police authority in the circumstances of his case, continues to serve as such, the

police authority for the force in which that officer is serving may consider, at such times as it may in its discretion determine, whether the disablement has ceased, significantly worsened or significantly improved: reg 21(2), (3). If on any such consideration the police authority, having considered all the relevant circumstances, advice and information available to it, determines that the officer ought to retire on the ground that he is permanently disabled for the performance of the ordinary duties of a member of the police force, it must require him to retire under reg 21(1) (subject to the proviso to that regulation: see the text to note 3 infra): reg 21(4).

3 See the Police Pensions Regulations 1987, SI 1987/257, reg A20 proviso (amended by SI 2004/1491); and the Police Pension Regulations 2006, SI 2006/3415 reg 21(1) proviso. As to appeals and medical questions see the Police Pensions Regulations 1987, SI 1987/257, regs H1-H7 (see PARA 413 post); and the Police Pension Regulations 2006, SI 2006/3415, regs 65-75 (see PARA 418 post).

## **UPDATE**

### **242 Retirement on permanent disablement**

NOTES--SI 2006/3415 amended: SI 2007/1932, SI 2008/1887, SI 2009/2060.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(ii) Police Training/243. Abolition of the Central Police Training and Development Authority.

## **(ii) Police Training**

### **243. Abolition of the Central Police Training and Development Authority.**

The Central Police Training and Development Authority<sup>1</sup> was abolished on 1 April 2007<sup>2</sup> and replaced by the National Policing Improvement Agency<sup>3</sup>. The Secretary of State<sup>4</sup> may make a scheme for the transfer to the Agency or the Secretary of State of property, rights and liabilities of the Central Police Training and Development Authority<sup>5</sup>.

1 The Central Police Training and Development Authority was established under the Criminal Justice and Police Act 2001 s 87, Sch 3 (repealed), with functions relating to the provision and promotion of police training.

2 See the Police and Justice Act 2006 ss 1(2)(a), 53; and the Police and Justice Act 2006 (Commencement No 2, Transitional and Saving Provisions) Order 2007, SI 2007/709, art 3.

3 Notwithstanding the abolition of the Central Police Training and Development Authority, the duties relating to the preparation of a statement of accounts and an annual report for the authority in respect of the financial year ending on 31 March 2007 subsist, and fall on the National Policing Improvement Agency: see the Police and Justice Act 2006 (Commencement No 2, Transitional and Saving Provisions) Order 2007, SI 2007/709, art 6(4), (5). As to the National Policing Improvement Agency see PARAS 223 ante, 244 post.

4 As to the Secretary of State see PARA 107 note 15 ante.

5 See the Police and Justice Act 2006 s 1(3), Sch 1 paras 37-46.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(ii) Police Training/244. The National Policing Improvement Agency.

### **244. The National Policing Improvement Agency.**

The National Policing Improvement Agency<sup>1</sup> has among its objects that of the provision of support to listed police forces<sup>2</sup> in connection with training and other personnel matters<sup>3</sup>.

- 1 As to the National Policing Improvement Agency see PARA 223 ante.
- 2 For the meaning of 'listed police force' see PARA 224 note 3 ante.
- 3 See the Police and Justice Act 2006 s 1(3), Sch 1 para 1(e)(iii); and PARA 224 ante.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/A. CONDUCT OF POLICE OFFICERS/(A) Conduct/245. Conduct of members of police forces.

### **(iii) Police Conduct and Efficiency**

#### **A. CONDUCT OF POLICE OFFICERS**

##### **(A) CONDUCT**

##### **245. Conduct of members of police forces.**

The Secretary of State<sup>1</sup> has made provision<sup>2</sup> with respect to the conduct of members of police forces<sup>3</sup> and maintenance of discipline and has established procedures for cases in which a member of a police force may be dealt with by dismissal, requirement to resign, reduction in rank, fine, suspension, reprimand, or caution<sup>4</sup>. These provisions have effect where a report, complaint or allegation is received on or after 1 April 2004 in respect of conduct by a member of a police force or a special constable<sup>5</sup>.

- 1 As to the Secretary of State see PARA 107 note 15 ante.
- 2 He is in exercise of the powers conferred on him by the Police Act 1996 s 50 (as amended) (see PARA 228 ante) and s 51 (as amended) (see PARA 110 ante).
- 3 For the meaning of 'police force' see PARA 102 note 11 ante.
- 4 See the Police (Conduct) Regulations 2004, SI 2004/645; and PARA 246 et seq post.
- 5 See *ibid* reg 2(3). Where a report, complaint or allegation: (1) was received before 1 April 2004 in respect of conduct by a member of a police force or a special constable; or (2) has been or is received on or after 1 April 2004 in respect of conduct by a special constable which occurred or commenced before 1 April 2004, nothing in the Police (Conduct) Regulations 2004, SI 2004/645, applies, and the provisions in force before that date (ie the Police (Conduct) Regulations 1999, SI 1999/730 (revoked)), as far as applicable, continue to have effect: Police (Conduct) Regulations 2004, SI 2004/645, reg 2(3). As to special constables see PARAS 108-112 ante.

#### **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

#### **UPDATE**

#### **245 Conduct of members of police forces**

NOTE 4--See also *R (on the application of Kay) v Chief Constable of Northumbria Police* [2009] EWHC 1835 (Admin), [2009] All ER (D) 238 (Jul).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/A. CONDUCT OF POLICE OFFICERS/(A) Conduct/246. Code of Conduct.

## **246. Code of Conduct.**

There is a Code of Conduct<sup>1</sup> which sets out the principles to guide police officers' conduct<sup>2</sup>. The primary duties of those who hold the office of constable<sup>3</sup> are the protection of life and property, the preservation of the Queen's peace<sup>4</sup>, and the prevention and detection of criminal offences. To fulfil these duties they are granted extraordinary powers; the public and the police service therefore have the right to expect the highest standards of conduct from them<sup>5</sup>.

The Code sets out the principles which guide police officers' conduct. It does not seek to restrict officers' discretion: rather it aims to define the parameters of conduct within which that discretion should be exercised. However, it is important to note that any breach of the principles in the Code may result in action being taken by the organisation, which, in serious cases, could involve dismissal<sup>6</sup>.

Police behaviour, whether on or off duty, affects public confidence in the police service. Any conduct which brings or is likely to bring discredit to the police service may be the subject of sanction. Accordingly, any allegation of conduct which could, if proved, bring or be likely to bring discredit to the police service should be investigated in order to establish whether or not a breach of the Code has occurred and whether formal disciplinary action is appropriate. No investigation is required where the conduct, if proved, would not bring or would not be likely to bring, discredit to the police service<sup>7</sup>.

The Code sets out the principles listed below:

- 63 (1) Honesty and integrity. It is of paramount importance that the public has faith in the honesty and integrity of police officers. Officers should therefore be open and truthful in their dealings; avoid being improperly beholden to any person or institution; and discharge their duties with integrity<sup>8</sup>.
- 64 (2) Fairness and impartiality. Police officers have a particular responsibility to act with fairness and impartiality in all their dealings with the public and their colleagues<sup>9</sup>.
- 65 (3) Politeness and tolerance. Officers should treat members of the public and colleagues with courtesy and respect, avoiding abusive or deriding attitudes or behaviour. In particular, officers must avoid: favouritism of an individual or group; all forms of harassment, victimisation or unreasonable discrimination; and overbearing conduct to a colleague, particularly to one junior in rank or service<sup>10</sup>.
- 66 (4) Use of force and abuse of authority. Officers must never knowingly use more force than is reasonable, nor should they abuse their authority<sup>11</sup>.
- 67 (5) Performance of duties. Officers should be conscientious and diligent in the performance of their duties. Officers should attend work promptly when rostered for duty. If absent through sickness or injury, they should avoid activities likely to retard their return to duty<sup>12</sup>.
- 68 (6) Lawful orders. The police service is a disciplined body. Unless there is good and sufficient cause to do otherwise, officers must obey all lawful orders and abide by the provisions of legislation applicable to the police. Officers should support

- their colleagues in the execution of their lawful duties, and oppose any improper behaviour, reporting it where appropriate<sup>13</sup>.
- 69 (7) Confidentiality. Information which comes into the possession of the police should be treated as confidential. It should not be used for personal benefit and nor should it be divulged to other parties except in the proper course of police duty. Similarly, officers should respect, as confidential, information about force policy and operations unless authorised to disclose it in the course of their duties<sup>14</sup>.
- 70 (8) Criminal offences. Officers must report any proceedings for a criminal offence taken against them. Conviction of a criminal offence or the administration of a caution may of itself result in further action being taken<sup>15</sup>.
- 71 (9) Property. Officers must exercise reasonable care to prevent loss or damage to property (excluding their own personal property but including police property)<sup>16</sup>.
- 72 (10) Sobriety. Whilst on duty officers must be sober. Officers should not consume alcohol when on duty unless specifically authorised to do so or it becomes necessary for the proper discharge of police duty<sup>17</sup>.
- 73 (11) Appearance. Unless on duties which dictate otherwise, officers should always be well turned out, clean and tidy whilst on duty in uniform or in plain clothes<sup>18</sup>.
- 74 (12) General conduct. Whether on or off duty, police officers should not behave in a way which is likely to bring discredit upon the police service<sup>19</sup>.

1 See the Police (Conduct) Regulations 2004, SI 2004/645, reg 3(1), Sch 1.

2 'Police officer' means a member of a police force or a special constable: *ibid* reg 3(1). A reference to an officer other than a senior officer includes a reference to a special constable, regardless of the rank or grade he holds; and any special constable of a rank or grade equivalent to or above the rank of chief superintendent is treated as if he were a chief superintendent: reg 3(2). 'Senior officer' means a chief constable, a deputy chief constable or an assistant chief constable or, in the case of the City of London and metropolitan police forces, a member of the force in question of or above the rank of commander: reg 3(1). For the meaning of 'police force' see PARA 102 note 11 *ante*. As to special constables see PARAS 108-112 *ante*. As to ranks see PARA 230 *ante*.

3 As to the office of constable see PARA 101 *et seq ante*.

4 As to the preservation of the Queen's peace see PARA 477 *et seq post*.

5 Police (Conduct) Regulations 2004, SI 2004/645, Sch 1 Note (a). As to the offence of misconduct in public office see PARA 104 *ante*.

6 *Ibid* Sch 1 Note (b).

7 *Ibid* Sch 1 Note (c). See, however, the Police Reform Act 2002 s 13, Sch 3 paras 15-28 (as amended) (see PARA 369 *et seq post*) and the Police (Conduct) Regulations 2004, SI 2004/645, reg 8(2) (see PARA 253 *post*) for circumstances where an investigation must take place.

8 *Ibid* Sch 1 para 1. False statements made by officers who are witnesses in criminal proceedings can form the basis of disciplinary proceedings: *R v Metropolitan Police Disciplinary Tribunal, ex p Police Complaints Authority* (1992) Independent, 29 April, DC.

9 Police (Conduct) Regulations 2004, SI 2004/645, Sch 1 para 2.

10 *Ibid* Sch 1 para 3. As to the treatment of police officers in relation to the law relating to discrimination see PARAS 105 *ante*, 405 *post*.

11 *Ibid* Sch 1 para 4.

12 *Ibid* Sch 1 para 5.

13 *Ibid* Sch 1 para 6.

14 *Ibid* Sch 1 para 7. As to the duty of confidentiality on the police see further PARAS 478-479 *post*; and CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 471.

- 15 Ibid Sch 1 para 8.
- 16 Ibid Sch 1 para 9. As to property in police possession see PARAS 520-522 post.
- 17 Ibid Sch 1 para 10.
- 18 Ibid Sch 1 para 11. As to police uniform see PARA 402 post.
- 19 Ibid Sch 1 para 12.

## **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/A. CONDUCT OF POLICE OFFICERS/(A) Conduct/247. Representation at disciplinary and other proceedings.

### **247. Representation at disciplinary and other proceedings.**

A member of a police force<sup>1</sup> of the rank of chief superintendent or below<sup>2</sup> may not be dismissed, required to resign or reduced in rank by a decision taken in proceedings<sup>3</sup> unless he has been given an opportunity to elect to be legally represented at any hearing held in the course of those proceedings<sup>4</sup>. Where a member of a police force makes such an election, he may be represented at the hearing, at his option, either by counsel or by a solicitor<sup>5</sup>. Except in a case where a member of a police force of the rank of chief superintendent or below has been given an opportunity to elect to be legally represented and has so elected, he may be represented at the hearing only by another member of a police force<sup>6</sup>.

Regulations<sup>7</sup> must specify: (1) a procedure for notifying a member of a police force of the effect of the above provisions<sup>8</sup>; (2) when he is to be notified of the effect of those provisions<sup>9</sup>; and (3) when he is to give notice whether he wishes to be legally represented at the hearing<sup>10</sup>.

If a member of a police force fails without reasonable cause to give notice in accordance with the regulations that he wishes to be legally represented<sup>11</sup>, or gives notice in accordance with the regulations that he does not wish to be legally represented<sup>12</sup>, he may be dismissed, required to resign or reduced in rank without his being legally represented<sup>13</sup>. If a member of a police force has given notice in accordance with the regulations that he wishes to be legally represented, the case against him may be presented by counsel or a solicitor whether or not he is actually so represented<sup>14</sup>.

1 For the meaning of 'police force' see PARA 102 note 11 ante.

2 As to ranks see PARA 230 ante.

3 I.e. a decision made under regulations made in accordance with the Police Act 1996 s 50(3)(a): see PARA 228 ante. As to such proceedings see PARAS 251 et seq, 280 et seq post.

4 Ibid 1996 s 84(1) (s 84(1), (3) amended by the Criminal Justice and Police Act 2001 s 125(3), (4)(c)).

5 Police Act 1996 s 84(2). Except in the case of senior officers, a police authority does not have the power to defray the costs of representation of officers: *R v South Yorkshire Police Authority, ex p Booth* (2000) Times, 10 October, [2000] All ER (D) 1107, DC. As to the payment of the expenses of a hearing in the case of senior



officers, including the costs of the officer concerned, see the Police (Conduct) Regulations 2004, SI 2004/645, reg 39 (as amended); and PARA 275 post.

6 Police Act 1996 s 84(3) (as amended: see note 4 supra).

7 le under ibid s 50 (as amended): see PARA 228 ante. As to such regulations see further PARAS 260, 264, 290 post.

8 Ibid s 84(4)(a).

9 Ibid s 84(4)(b).

10 Ibid s 84(4)(c).

11 Ibid s 84(5)(a).

12 Ibid s 84(5)(b).

13 Ibid s 84(5).

14 Ibid s 84(6).

## UPDATE

### 245-279 Conduct of Police Officers

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

### 247 Representation at disciplinary and other proceedings

TEXT AND NOTES--Police Act 1996 s 84 substituted: Criminal Justice and Immigration Act 2008 Sch 22 para 7. For transitional and saving provisions see Criminal Justice and Immigration Act 2008 Sch 27 para 35(1), (2)(a), (3); and SI 2008/2993.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/A. CONDUCT OF POLICE OFFICERS/(A) Conduct/248. Guidance concerning disciplinary proceedings.

### 248. Guidance concerning disciplinary proceedings.

The Secretary of State<sup>1</sup> may issue guidance to police authorities<sup>2</sup>, chief officers of police<sup>3</sup> and other members of police forces<sup>4</sup> concerning the discharge of their functions in relation to the conduct, efficiency and effectiveness of members of police forces and the maintenance of discipline<sup>5</sup>, and they must have regard to any such guidance in the discharge of their functions<sup>6</sup>. The Secretary of State may also issue guidance to the Independent Police Complaints Commission<sup>7</sup> concerning the discharge of its functions under any regulations<sup>8</sup> in relation to disciplinary proceedings<sup>9</sup>. However, nothing in these provisions<sup>10</sup> authorises the issuing of any guidance about a particular case<sup>11</sup>.

It is the duty of every person<sup>12</sup> to whom any such guidance is issued to have regard to that guidance in discharging the functions to which the guidance relates<sup>13</sup>. A failure by a person to whom such guidance is issued to have regard to the guidance is admissible in evidence in any disciplinary proceedings or on any appeal from a decision taken in any such proceedings<sup>14</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Police Act 1996 see PARA 195 ante.

2 For the meaning of 'police authority' see PARA 139 note 1 ante.

3 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

4 For the meaning of 'police force' see PARA 102 note 11 ante.

5 le their functions under regulations made under the Police Act 1996 s 50 (as amended) in relation to the matters mentioned in s 50(2)(e): see PARA 228 ante.

6 Ibid s 87(1). As to such guidance see Home Office Circular 18/2006 'Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures'. In order for the statutory requirement to have regard to the guidance to apply, the provisions of the guidance must fall within the terms of the Police Act 1996 s 87. If they do not, their legal effect has to be determined by reference to general principles of administrative law: *R (on the application of Coghlan) v Chief Constable of Greater Manchester Police* [2004] EWHC 2801 (Admin), [2005] 2 All ER 890, [2004] All ER (D) 26 (Dec). See also *R (on the application of the Chief Constable of Avon and Somerset Police) v Police Appeals Tribunal* [2004] EWHC 220 (Admin), (2004) Times, 11 February, [2004] All ER (D) 17 (Feb).

7 As to the Independent Police Complaints Commission see PARA 316 et seq post.

8 le any regulations under the Police Act 1996 s 50 (as amended): see PARA 228 ante.

9 Ibid s 87(1A) (s 87(1A), (3)-(5) added, and s 87(2) substituted, by the Police Reform Act 2002 s 107(1), Sch 7 para 18). 'Disciplinary proceedings' means any proceedings under any regulations under the Police Act 1996 s 50 (as amended) that are identified as disciplinary proceedings by those regulations: s 87(5) (as so added). See also note 6 supra.

10 le ibid s 87 (as amended).

11 Ibid s 87(2) (as substituted: see note 9 supra).

12 For the meaning of 'person' see PARA 110 note 6 ante.

13 Police Act 1996 s 87(3) (as added: see note 9 supra). See also note 6 supra. A requirement 'to have regard' to guidance means no more than that a person is required to take the guidance into account when exercising his functions and does not mean that he is obliged to comply with the guidance: *R v Police Complaints Board, ex p Madden, R v Police Complaints Board, ex p Rhone* [1983] 2 All ER 353, [1983] Crim LR 263.

14 Police Act 1996 s 87(4) (as added: see note 9 supra).

## UPDATE

### 245-279 Conduct of Police Officers

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

### 248 Guidance concerning disciplinary proceedings

TEXT AND NOTES 6, 9--Police Act 1996 s 87(1) substituted, s 87(1ZA) added, s 87(1A), (5) amended: Criminal Justice and Immigration Act 2008 Sch 22 para 9. For savings see SI 2008/2993.

## 249. Suspension.

Where it appears to the appropriate authority<sup>1</sup>, on receiving a report, complaint or allegation which indicates that the conduct of a police officer does not meet the appropriate standard<sup>2</sup>, that the officer concerned<sup>3</sup> ought to be suspended from his office as constable<sup>4</sup> and (in the case of a member of a force) from membership of the force, the appropriate authority may<sup>5</sup> so suspend him<sup>6</sup>. The appropriate authority must not suspend a police officer unless it appears to it that either of the following conditions (known as 'the suspension conditions') is satisfied: (1) that the effective investigation of the matter may be prejudiced unless the officer concerned is so suspended<sup>7</sup>; (2) that the public interest, having regard to the nature of the report, complaint or allegation, and any other relevant considerations, requires that he should be so suspended<sup>8</sup>.

If the appropriate authority determines that a senior officer ought to be suspended, it must forthwith notify the Independent Police Complaints Commission<sup>9</sup> of its decision and of the suspension condition appearing to it to justify its decision<sup>10</sup>. If, upon being so notified of the decision of the appropriate authority, the Commission is satisfied that the suspension condition in question is fulfilled, it must as soon as practicable notify its approval of the suspension of the senior officer concerned to the appropriate authority; and the suspension of the officer does not have effect unless the approval of the Commission is so given<sup>11</sup>.

The appropriate authority concerned may exercise the power to suspend the officer concerned at any time, subject to the need for the approval of the Commission in appropriate cases<sup>12</sup>, from the time of the receipt of the report, complaint or allegation until: (a) it is decided that the conduct of the officer concerned is not to be the subject<sup>13</sup> of proceedings<sup>14</sup>; (b) the notification of a finding that the conduct of the officer concerned did not fail to meet the appropriate standard<sup>15</sup>; (c) a sanction has been imposed<sup>16</sup> and, in the case of an officer other than a senior officer<sup>17</sup>, either the officer concerned has not requested a review<sup>18</sup> or any such review has been completed<sup>19</sup>; (d) in the case of a senior officer, the Commission decides otherwise<sup>20</sup>; (e) in the case of a senior officer, a notification that, in spite of a finding that the conduct of the officer failed to meet the appropriate standard, no sanction should be imposed<sup>21</sup>.

Where the officer concerned is suspended, he remains suspended until there occurs any of the events mentioned in heads (a) to (e) above, or until the appropriate authority decides he should cease to be suspended, whichever first occurs<sup>22</sup>. Where the officer concerned who is suspended is required to resign<sup>23</sup>, he remains suspended until the requirement to resign takes effect<sup>24</sup>.

In cases of urgency, the like power of suspension<sup>25</sup> may be exercised with immediate effect in relation to a chief officer by the police authority<sup>26</sup>, and in relation to any other senior officer by the chief officer concerned<sup>27</sup>. Where a senior officer has been so suspended, the police authority or, as the case may be, the chief officer must notify the Commission forthwith<sup>28</sup>. The suspension of a senior officer under this provision<sup>29</sup> ceases to have effect: (i) at the expiry of 24 hours from its imposition unless within that period the Commission has notified the appropriate authority of its approval of it<sup>30</sup>; or (ii) if earlier, when any of the events mentioned in heads (a) to (e) above occurs<sup>31</sup>.

A chief officer of police has the power either to allow or to refuse to allow the retirement of an officer who faces disciplinary proceedings<sup>32</sup>.

1 'Appropriate authority' means: (1) where the officer concerned is a senior officer of any police force, the police authority for the force's area; (2) in any other case, the chief officer of the police officer's force: Police (Conduct) Regulations 2004, SI 2004/645, reg 3(1). Where the appropriate authority is a chief officer, he may delegate his powers under reg 4 (see the text to notes 2-24 infra): (a) where the officer concerned is a member of the City of London or metropolitan police force or is a special constable appointed for the area of one of those forces, to an officer of at least the rank of commander (reg 4(8)(a)); (b) in any other case, to an officer of at least the rank of assistant chief constable (reg 4(8)(b)). For the meaning of 'police force' see PARA 102 note 11

ante. For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'police area' see PARA 136 note 2 ante. For the meaning of 'chief officer of police' see PARA 105 note 7 ante. For the meanings of 'police officer' and 'senior officer' see PARA 246 note 2 ante. As to ranks see PARA 230 ante. As to special constables see PARAS 108-112 ante. As to the metropolitan police force see PARA 137 ante; and as to the City of London police force see PARA 138 ante.

2 'Appropriate standard' means the standard set out in the Code of Conduct: *ibid* reg 3(1). As to the Code of Conduct see PARA 246 ante.

3 'The officer concerned' means the police officer in relation to whose conduct there has been a report, complaint or allegation: *ibid* reg 3(1).

4 As to the office of constable see PARA 101 *et seq* ante.

5 *Ie* subject to the following provisions of the Police (Conduct) Regulations 2004, SI 2004/645, reg 4: see the text to notes 6-24 *infra*.

6 *Ibid* reg 4(1). As to the requirement for the appropriate authority to have regard to any guidance issued by the Secretary of State see PARA 248 ante. See also *R (on the application of Coghlan) v Chief Constable of Greater Manchester Police* [2004] EWHC 2801 (Admin), [2005] 2 All ER 890, [2004] All ER (D) 26 (Dec).

7 Police (Conduct) Regulations 2004, SI 2004/645, reg 4(2)(a).

8 *Ibid* reg 4(2)(b).

9 As to the Independent Police Complaints Commission see PARA 316 *et seq* post.

10 Police (Conduct) Regulations 2004, SI 2004/645, reg 4(3).

11 *Ibid* reg 4(4).

12 *Ie* subject to *ibid* reg 4(3), (4): see the text to notes 9-11 *supra*.

13 *Ie* under *ibid* reg 11: see PARA 255 post.

14 *Ibid* reg 4(5)(a).

15 *Ibid* reg 4(5)(b).

16 *Ie* under *ibid* reg 35: see PARA 273 post.

17 'Officer other than a senior officer' means a police officer below the rank of senior officer: *ibid* reg 3(1).

18 *Ie* within the period specified in *ibid* reg 40: see PARA 276 post.

19 *Ibid* reg 4(5)(c).

20 *Ibid* reg 4(5)(d).

21 *Ibid* reg 4(5)(e).

22 *Ibid* reg 4(6). As to the exercise of the power to lift a suspension see *R (on the application of Coghlan) v Chief Constable of Greater Manchester Police* [2004] EWHC 2801 (Admin), [2005] 2 All ER 890, [2004] All ER (D) 26 (Dec).

23 *Ie* under the Police (Conduct) Regulations 2004, SI 2004/645, reg 35: see PARA 273 post.

24 *Ibid* reg 4(7).

25 *Ie* the like power of suspension as under *ibid* reg 4(1) and (2): see the text to notes 1-8 *supra*.

26 *Ibid* reg 5(1)(a).

27 *Ibid* reg 5(1)(b).

28 *Ibid* reg 5(2).

29 *Ie* under *ibid* reg 5.

30 Ibid reg 5(3)(a).

31 Ibid reg 5(3)(b).

32 *R v Chief Constable of Devon and Cornwall Constabulary, ex p Hay, R v Chief Constable of the Devon and Cornwall Constabulary, ex p Police Complaints Authority* [1996] 2 All ER 711, DC. See also *R (on the application of Coghlan) v Chief Constable of Greater Manchester Police* [2004] EWHC 2801 (Admin), [2005] 2 All ER 890, [2004] All ER (D) 26 (Dec).

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### **250. Record of conduct proceedings.**

The chief officer<sup>1</sup> concerned must cause a record to be kept in which is entered the case brought against every officer concerned<sup>2</sup>, together with the finding thereon and a record of the decision in any further proceedings in connection therewith<sup>3</sup>. Where the officer concerned is a chief officer, the appropriate authority<sup>4</sup> must cause such a record to be kept<sup>5</sup>.

1 'Chief officer' is not defined in the Police (Conduct) Regulations 2004, SI 2004/645. For the meaning of 'chief officer of police' in the Police Act 1996 see PARA 105 note 7 ante.

2 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

3 Police (Conduct) Regulations 2004, SI 2004/645, reg 44(1). This provision is expressed to be subject to reg 44(2): see the text to notes 4-5 infra.

4 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

5 Police (Conduct) Regulations 2004, SI 2004/645, reg 44(2).

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### **(B) INVESTIGATIONS**

#### **251. Conduct of investigations where there are outstanding criminal proceedings.**

Where there are criminal proceedings outstanding against the officer concerned<sup>1</sup>, proceedings<sup>2</sup>, other than the exercise of the power to suspend<sup>3</sup>, may not take place unless the appropriate authority<sup>4</sup> believes that in the exceptional circumstances of the case it would be appropriate for them to do so<sup>5</sup>.

1 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

2 ie proceedings under the Police (Conduct) Regulations 2004, SI 2004/645.

3 ie under ibid reg 4 or reg 5: see PARA 249 ante.

4 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

5 Police (Conduct) Regulations 2004, SI 2004/645, reg 6. The character and purpose of disciplinary proceedings is entirely different from those of criminal proceedings and there is no bar to the bringing of disciplinary proceedings in respect of the same charge as that of which a person has been acquitted in criminal proceedings: *R (on the application of Redgrave) v Metropolitan Police Comr* [2003] EWCA Civ 04, [2003] 1 WLR 1136, [2003] All ER (D) 167 (Jan).

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### **252. Appointment of supervising officer.**

Where a report, complaint or allegation is received by the chief officer<sup>1</sup> which indicates that the conduct of a police officer<sup>2</sup> (other than a senior officer<sup>3</sup>) did not meet the appropriate standard<sup>4</sup>, the case may be referred by him to a police officer (known as a 'supervising officer')<sup>5</sup>, who satisfies the conditions in heads (1) to (3) below, to supervise the investigation of the case<sup>6</sup>. This provision does not apply where the case arises from a complaint or conduct matter<sup>7</sup> subject to investigations<sup>8</sup> supervised, managed or carried out by the Independent Police Complaints Commission<sup>9</sup>.

The supervising officer must be: (1) of at least the rank<sup>10</sup> of chief inspector and at least one rank above that of the officer concerned<sup>11</sup>; (2) a member of, or a special constable<sup>12</sup> appointed for the area of, the same force as the officer concerned<sup>13</sup>; and (3) not an interested party<sup>14</sup>.

1 'Chief officer' is not defined in the Police (Conduct) Regulations 2004, SI 2004/645. For the meaning of 'chief officer of police' in the Police Act 1996 see PARA 105 note 7 ante.

2 For the meaning of 'police officer' see PARA 246 note 2 ante.

3 For the meaning of 'senior officer' see PARA 246 note 2 ante.

4 For the meaning of 'appropriate standard' see PARA 249 note 2 ante.

5 See the Police (Conduct) Regulations 2004, SI 2004/645, reg 3(1).

6 Ibid reg 7(1).

7 'Conduct matter' means any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have: (1) committed a criminal offence; or (2) behaved in a manner which would justify the bringing of disciplinary proceedings: *ibid* reg 3(1).

8 le to which the Police Reform Act 2002 s 13, Sch 3 para 17, 18 or 19 applies: see PARAS 371-372, 374 post.

9 Police (Conduct) Regulations 2004, SI 2004/645, reg 7(2). As to the Independent Police Complaints Commission see PARA 316 et seq post.

10 As to ranks see PARA 230 ante.

11 Police (Conduct) Regulations 2004, SI 2004/645, reg 7(3)(a). For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

12 As to special constables see PARAS 108-112 ante.

13 Police (Conduct) Regulations 2004, SI 2004/645, reg 7(3)(b).

14 *Ibid* reg 7(3)(c).

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### **253. Appointment of investigating officer.**

A supervising officer<sup>1</sup> may appoint an investigating officer to investigate the case<sup>2</sup>. Where an appropriate authority<sup>3</sup> receives a report, complaint or allegation which indicates that the conduct of a senior officer<sup>4</sup> did not meet the appropriate standard<sup>5</sup>, it must<sup>6</sup>, unless it decides in the light of such preliminary enquiries as it may make that no proceedings<sup>7</sup> need be taken, refer the matter to an investigating officer who must cause it to be investigated<sup>8</sup>. These provisions do not apply where the case arises from a complaint or conduct matter<sup>9</sup> subject to investigations<sup>10</sup> supervised, managed or carried out by the Independent Police Complaints Commission<sup>11</sup>.

If the matter concerns the conduct of the Metropolitan Police Commissioner or the deputy metropolitan police commissioner<sup>12</sup>, the appropriate authority must notify the Secretary of State<sup>13</sup> and the Secretary of State must appoint a person (whether a police officer<sup>14</sup> or not) as the investigating officer<sup>15</sup>. In any other case which concerns the conduct of a senior officer, the investigating officer must be appointed by the appropriate authority<sup>16</sup>. For these purposes<sup>17</sup>, in a case which concerns the conduct of a senior officer, neither:

75 (1) the chief officer concerned<sup>18</sup>; nor

76 (2) in a case where the person who is the subject of the investigation is a senior officer in a force other than the metropolitan police force<sup>19</sup>, a member of the same force<sup>20</sup> as that person<sup>21</sup>; nor

77 (3) in case where the person who is the subject of the investigation is a senior officer in the metropolitan police force, a person serving in the same division as that person<sup>22</sup>,

may be appointed as the investigating officer<sup>23</sup>.

In a case which concerns the conduct of an officer other than a senior officer, the investigating officer must be:

- 78 (a) a member of the same police force as the officer concerned or, if the chief officer of some other force is requested and agrees to provide an investigating officer, a member of that other force<sup>24</sup>;
- 79 (b) of at least the rank of sergeant<sup>25</sup>;
- 80 (c) if the officer concerned is a superintendent or chief superintendent and:  
9
- 20. (i) if the investigating officer is a member of the City of London<sup>26</sup> or metropolitan police force, of at least the rank of commander<sup>27</sup>;
- 21. (ii) if the investigating officer is a member of any other force, of at least the rank of assistant chief constable<sup>28</sup>.
- 10

An investigating officer must, other than in a case which concerns the conduct of the Metropolitan Police Commissioner or the deputy metropolitan police commissioner<sup>29</sup>, be of at least the same rank as the officer concerned<sup>30</sup> and not an interested party<sup>31</sup>.

1 For the meaning of 'supervising officer' see PARA 252 ante.

2 Police (Conduct) Regulations 2004, SI 2004/645, reg 8(1).

3 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

4 For the meaning of 'senior officer' see PARA 246 note 2 ante.

5 For the meaning of 'appropriate standard' see PARA 249 note 2 ante.

6 Police (Conduct) Regulations 2004, SI 2004/645, reg 8(2).

7 *Ibid* reg 14: see PARA 258 post.

8 *Ibid* reg 8(4).

9 For the meaning of 'conduct matter' see PARA 252 note 7 ante.

10 *Ibid* to which the Police Reform Act 2002 s 13, Sch 3 para 17, 18 or 19 applies: see PARAS 371-372, 374 post.

11 Police (Conduct) Regulations 2004, SI 2004/645, reg 8(3). As to the Independent Police Complaints Commission see PARA 316 et seq post.

12 As to the Metropolitan Police Commissioner see PARA 183 ante; and as to the deputy metropolitan police commissioner see PARA 184 ante.

13 Police (Conduct) Regulations 2004, SI 2004/645, reg 8(5)(a). As to the Secretary of State see PARA 107 note 15 ante.

14 For the meaning of 'police officer' see PARA 246 note 2 ante.

15 Police (Conduct) Regulations 2004, SI 2004/645, reg 8(5)(b).

16 *Ibid* reg 8(6).

17 *Ibid* for the purposes of *ibid* reg 8(5) or (6): see the text to notes 12-16 supra.

18 *Ibid* reg 8(8)(a).

19 As to the metropolitan police force see PARA 137 ante.



20 A reference in the Police (Conduct) Regulations 2004, SI 2004/645, reg 8 to a member of a police force includes a reference to a special constable appointed for the area of that force: reg 8(10). For the meaning of 'police force' see PARA 102 note 11 ante. As to special constables see PARAS 108-112 ante.

21 Ibid reg 8(8)(b).

22 Ibid reg 8(8)(c).

23 Ibid reg 8(8).

24 Ibid reg 8(7)(a).

25 Ibid reg 8(7)(b). As to ranks see PARA 230 ante.

26 As to the City of London police force see PARA 138 ante.

27 Police (Conduct) Regulations 2004, SI 2004/645, reg 8(7)(c)(i).

28 Ibid reg 8(7)(c)(ii).

29 Is a case falling within ibid reg 8(5): see the text to notes 12-15 supra.

30 Ibid reg 8(9)(a).

31 Ibid reg 8(9)(b).

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### **254. Notice of investigation.**

The investigating officer<sup>1</sup> must as soon as is practicable<sup>2</sup> (without prejudicing his own or any other investigation of the matter) cause the officer concerned<sup>3</sup> to be given written<sup>4</sup> notice: (1) that there is to be an investigation in to the case<sup>5</sup>; (2) of the nature of the report, complaint or allegation<sup>6</sup>; (3) informing him that he is not obliged to say anything concerning the matter, but that it may harm his defence if he does not mention when questioned or when providing a written response something which he later relies on in any subsequent<sup>7</sup> proceedings<sup>8</sup>; (4) informing him that he may, if he so desires, make a written or oral statement concerning the matter to the investigating officer or to the appropriate authority<sup>9</sup> and that if he makes such a statement it may be used in any such subsequent proceedings<sup>10</sup>; (5) informing him that he has the right to seek advice from his staff association or any other body<sup>11</sup>; and (6) informing him that he has the right to be accompanied by a police officer<sup>12</sup>, who must not be an interested party, to any meeting, interview or hearing<sup>13</sup>.

1 As to the investigating officer see PARA 253 ante.

2 See *R v Chief Constable of Merseyside Police, ex p Calveley* [1986] QB 424, [1986] 1 All ER 257, CA; *R v Chief Constable of the Merseyside Police, ex p Merrill* [1989] 1 WLR 1077, (1989) Times, 19 May, CA.

3 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

- 4 For the meaning of 'writing' see PARA 115 note 9 ante.
- 5 Police (Conduct) Regulations 2004, SI 2004/645, reg 9(a).
- 6 Ibid reg 9(b).
- 7 Ie under the Police (Conduct) Regulations 2004, SI 2004/645.
- 8 Ibid reg 9(c).
- 9 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.
- 10 Police (Conduct) Regulations 2004, SI 2004/645, reg 9(d).
- 11 Ibid reg 9(e). As to police representative organisations see PARA 423-426 post.
- 12 For the meaning of 'police officer' see PARA 246 note 2 ante.
- 13 Police (Conduct) Regulations 2004, SI 2004/645, reg 9(f).

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### **255. Investigating officer's report.**

At the end of his investigation the investigating officer<sup>1</sup> must as soon as practicable submit a written<sup>2</sup> report on the case: (1) if the case concerns a senior officer<sup>3</sup>, to the appropriate authority<sup>4</sup>; (2) in any other case, to the supervising officer<sup>5</sup>; and (3) if the Independent Police Complaints Commission is managing or supervising the investigation, to the Commission<sup>6</sup>. If at any time during his investigation it appears to the investigating officer that the case is likely to be a special case<sup>7</sup>, he must, whether or not the investigation is at an end, submit to the appropriate authority (in the case of a senior officer) or supervising officer (in any other case) a statement of his belief that the case may be a special case<sup>8</sup> and the grounds for that belief<sup>9</sup>, and a written report on the case so far as it has then been investigated<sup>10</sup>.

On receipt of the investigating officer's report the appropriate authority (in the case of a senior officer) or supervising officer (in any other case) may refer the case to a hearing<sup>11</sup>. Where: (1) the appropriate authority has<sup>12</sup> a duty to take action, to secure that disciplinary proceedings are proceeded with or to comply with a direction<sup>13</sup>; or (2) the officer concerned<sup>14</sup> has received two written warnings about his conduct within the previous 12 months and has in a statement<sup>15</sup> admitted that his conduct failed to meet the appropriate standard<sup>16</sup>, the appropriate authority (in the case of a senior officer) or supervising officer (in any other case) must refer the case to a hearing<sup>17</sup>. If the appropriate authority or supervising officer decides that no proceedings<sup>18</sup> need be taken, the officer concerned must be so informed in writing as soon as possible<sup>19</sup>.

Where the appropriate authority or the supervising officer, on receipt of a report submitted by the investigating officer<sup>20</sup>, is of the opinion that the case is likely to be a special case<sup>21</sup>, the authority must take the specified steps<sup>22</sup> or, as the case may be, the supervising officer must refer the case to the appropriate officer<sup>23</sup> who must take such steps<sup>24</sup>. The specified steps are: (a) if the conditions relating to special cases<sup>25</sup> are not satisfied, the case must be returned to

the investigating officer or supervising officer as the case may be to complete the investigation (if necessary)<sup>26</sup>; (b) if the conditions are satisfied, the case must be certified as a special case and referred to a hearing, and the officer concerned must be notified accordingly<sup>27</sup>, or, if the circumstances are such as make such certification inappropriate, the case must be returned to the investigating officer or supervising officer as the case may be<sup>28</sup>.

Where a case is not referred to a hearing, no reference to it must be made on the personal record of the officer concerned<sup>29</sup>.

1 As to the investigating officer see PARA 253 ante.

2 For the meaning of 'written' see PARA 115 note 9 ante.

3 For the meaning of 'senior officer' see PARA 246 note 2 ante.

4 Police (Conduct) Regulations 2004, SI 2004/645, reg 10(1)(a). For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

5 Ibid reg 10(1)(b). For the meaning of 'supervising officer' see PARA 252 ante.

6 Ibid reg 10(1)(c). As to the Independent Police Complaints Commission see PARA 316 et seq post.

7 Ie one in respect of which the conditions specified in the Police Reform Act 2002 s 45, Sch 2 Pt 1 (see PARA 279 post) are likely to be satisfied.

8 Ie one to which ibid s 45 applies: see PARA 279 post.

9 Police (Conduct) Regulations 2004, SI 2004/645, reg 10(2)(a).

10 Ibid reg 10(2)(b).

11 Ibid reg 11(1). This provision is expressed to be subject to reg 11(2), (4)-(6): see the text to notes 12-17, 20-28 infra. Proceedings at or in connection with a hearing to which a case is referred under reg 11 are, for the purposes of the Police Reform Act 2002 s 29(1) (interpretation of Pt 2: see PARA 327 note 8 post), disciplinary proceedings: Police (Conduct) Regulations 2004, SI 2004/645, reg 11(8).

12 Ie under the Police Reform Act 2002 Sch 3 para 27: see PARA 390 post.

13 Police (Conduct) Regulations 2004, SI 2004/645, reg 11(2)(a).

14 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

15 Ie made under the Police (Conduct) Regulations 2004, SI 2004/645, reg 9: see PARA 254 ante.

16 Ibid reg 11(2)(b). For the meaning of 'appropriate standard' see PARA 249 note 2 ante.

17 Ibid reg 11(2). As to hearings see PARA 259 et seq post. See also note 11 supra.

18 Ie under ibid reg 14: see PARA 258 post.

19 Ibid reg 11(3).

20 Ie under ibid reg 10(2): see the text to notes 7-10 supra.

21 Ie one in respect of which the conditions specified in the Police Reform Act 2002 Sch 2 Pt 1 (see PARA 279 post) are likely to be satisfied.

22 Police (Conduct) Regulations 2004, SI 2004/645, reg 11(4).

23 'Appropriate officer' means: (1) where the officer concerned is a member of the metropolitan police force or the City of London police force or a special constable appointed for the area of one of those forces, a police officer of at least the rank of commander in that police force; (2) in any other case, a police officer of at least the rank of assistant chief constable: ibid reg 3(1). As to the metropolitan police force see PARA 137 ante; and as to the City of London police force see PARA 138 ante. As to special constables see PARAS 108-112 ante. For the meaning of 'police officer' see PARA 246 note 2 ante. As to ranks see PARA 230 ante.

- 24 Ibid reg 11(5).
- 25 Ie the conditions specified in the Police Reform Act 2002 Sch 2 Pt 1: see PARA 279 post.
- 26 Police (Conduct) Regulations 2004, SI 2004/645, reg 11(6)(a).
- 27 Ibid reg 11(6)(b)(i).
- 28 Ibid reg 11(6)(b)(ii).
- 29 Ibid reg 11(7). As to personal records see PARA 395 post.

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### **256. Withdrawal of case.**

At any time before the beginning of the hearing<sup>1</sup> the appropriate authority<sup>2</sup> (in the case of a senior officer<sup>3</sup>) or the supervising officer<sup>4</sup> (in any other case) may direct that the case be withdrawn, unless the appropriate authority has a duty<sup>5</sup> to proceed<sup>6</sup>. Where such a direction is given, the appropriate authority or supervising officer must, as soon as possible, cause the officer concerned<sup>7</sup> to be served with a written<sup>8</sup> notice of the direction and the case must be treated as if it had not been referred to a hearing<sup>9</sup>.

- 1 As to hearings see PARA 259 et seq post.
- 2 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.
- 3 For the meaning of 'senior officer' see PARA 246 note 2 ante.
- 4 For the meaning of 'supervising officer' see PARA 252 ante.
- 5 Ie under the Police Reform Act 2002 Sch 3 para 27: see PARA 390 post.
- 6 Police (Conduct) Regulations 2004, SI 2004/645, reg 12(1).
- 7 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.
- 8 For the meaning of 'written' see PARA 115 note 9 ante.
- 9 Police (Conduct) Regulations 2004, SI 2004/645, reg 12(2).

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### **257. Sanction without hearing and notice of proceedings: senior officers.**

If a senior officer<sup>1</sup> accepts that his conduct did not meet the appropriate standard<sup>2</sup>, the appropriate authority<sup>3</sup> may impose a sanction<sup>4</sup> without the case being<sup>5</sup> dealt with<sup>6</sup>. Notwithstanding that the senior officer concerned accepts that his conduct did not meet the appropriate standard, the appropriate authority may, after considering the report of the investigation<sup>7</sup>, deal with the matter according to the appropriate authority's discretion if it is satisfied that it does not justify the imposition<sup>8</sup> of any sanction<sup>9</sup>.

If the senior officer concerned: (1) accepts that his conduct did not meet the appropriate standard but the appropriate authority does not proceed<sup>10</sup> as mentioned above<sup>11</sup>; or (2) does not accept that his conduct failed to meet the appropriate standard but the appropriate authority, after taking into account any statement he may have made, is not satisfied that his conduct did meet the appropriate standard<sup>12</sup>, then the appropriate authority must refer the case to a hearing<sup>13</sup>. Notwithstanding that a case is one to which these provisions apply by virtue of head (2) above, if, after considering the report of the investigation, the appropriate authority is satisfied that the conduct in question, even if found to have failed to meet the appropriate standard, would not justify the imposition of any sanction<sup>14</sup>, the case need not be referred to a hearing and the matter may be dealt with according to the appropriate authority's discretion<sup>15</sup>.

No sanction may be imposed<sup>16</sup> on a police officer<sup>17</sup> who is not a senior officer unless the case has been referred to a hearing<sup>18</sup>.

1 For the meaning of 'senior officer' see PARA 246 note 2 ante.

2 For the meaning of 'appropriate standard' see PARA 249 note 2 ante.

3 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

4 Ie under the Police (Conduct) Regulations 2004, SI 2004/645, reg 35: see PARA 273 post.

5 Ie in accordance with ibid reg 13(3), (4) (see the text to notes 10-15 infra) and regs 14-34 (see PARAS 258-272 post).

6 Ibid reg 13(1).

7 As to the investigating officer's report see PARA 255 ante.

8 Ie under the Police (Conduct) Regulations 2004, SI 2004/645.

9 Ibid reg 13(2).

10 Ie as mentioned in ibid reg 13(1) or (2): see the text to notes 1-9 supra.

11 Ibid reg 13(3)(a).

12 Ibid reg 13(3)(b).

13 Ibid reg 13(3). As to hearings see PARA 259 et seq post.

14 Ie under the Police (Conduct) Regulations 2004, SI 2004/645.

15 Ibid reg 13(4).

16 Ie under ibid reg 35: see PARA 273 post.

17 For the meaning of 'police officer' see PARA 246 note 2 ante.

18 Police (Conduct) Regulations 2004, SI 2004/645, reg 15.

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Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **258. Notice of decision to refer case to a hearing.**

Where a case is to be referred to a hearing, as soon as practicable the officer concerned<sup>1</sup> must be given written<sup>2</sup> notice of the decision to refer the case to a hearing<sup>3</sup>. The notice must specify the conduct of the officer concerned which it is alleged failed to meet the appropriate standard<sup>4</sup> and the paragraph of the Code of Conduct<sup>5</sup> in respect of which the appropriate standard is alleged not to have been met<sup>6</sup>.

At least 21 days before the date of the hearing the officer concerned must be supplied with copies of any statement he may have made to the investigating officer<sup>7</sup>, and any relevant statement, document or other material in each case obtained during the course of the investigation<sup>8</sup>.

1 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

2 For the meaning of 'written' see PARA 115 note 9 ante.

3 Police (Conduct) Regulations 2004, SI 2004/645, reg 14(1). In the case of a senior officer, the notice must be given to that officer by an independent solicitor instructed by the appropriate authority to this effect: reg 14(4). The reference to an independent solicitor is a reference to a solicitor who is not a member, officer or servant of the appropriate authority or of any local authority which appoints any member of the appropriate authority: reg 14(5). For the meaning of 'senior officer' see PARA 246 note 2 ante. For the meaning of 'appropriate authority' see PARA 249 note 1 ante. As to hearings see PARA 259 et seq post.

4 For the meaning of 'appropriate standard' see PARA 249 note 2 ante.

5 As to the Code of Conduct see PARA 246 ante.

6 Police (Conduct) Regulations 2004, SI 2004/645, reg 14(2).

7 Ibid reg 14(1)(a). Any reference to a copy of a statement must, where it was not made in writing, be construed as a reference to a copy of an account thereof: reg 14(3). As to the investigating officer and the investigation see PARAS 253-255 ante.

8 Ibid reg 14(1)(b).

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## (C) HEARING

### **259. Notice of hearing**

The appropriate authority<sup>1</sup> (in the case of a senior officer<sup>2</sup>) or the supervising officer<sup>3</sup> (in any other case) must ensure that at least 21 days in advance the officer concerned<sup>4</sup> is notified of the time, date and place of the hearing<sup>5</sup>. In certain cases<sup>6</sup> the hearing may, if the appropriate authority or supervising officer considers it appropriate in the circumstances, take place before the expiry of 21 days<sup>7</sup>.

1 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

2 For the meaning of 'senior officer' see PARA 246 note 2 ante.

3 For the meaning of 'supervising officer' see PARA 252 ante.

4 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

5 Police (Conduct) Regulations 2004, SI 2004/645, reg 16(1).

6 Ibid reg 16(2) applies where the officer concerned is given a written notice under reg 14(1) (see PARA 258 ante) of a decision to refer the case to a hearing and: (1) at the time he receives such a notice he is detained in pursuance of the sentence of a court in a prison or other institution to which the Prison Act 1952 (see PRISONS) applies, or has received a suspended sentence of imprisonment (Police (Conduct) Regulations 2004, SI 2004/645, reg 16(3)(a)); and (2) having been supplied under reg 14 with the documents therein mentioned he does not elect to be legally represented at the hearing (reg 16(3)(b)). As to suspended prison sentences see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq. As to legal representation see PARA 260 post.

7 Ibid reg 16(2).

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### **260. Legal representation**

If a supervising officer<sup>1</sup> is of the opinion that the hearing should have available the sanctions<sup>2</sup> of dismissal, requirement to resign or reduction in rank, he must cause the officer concerned<sup>3</sup> to be given notice in writing<sup>4</sup>, at the same time as he is given notice<sup>5</sup> of the decision to refer the case to a hearing, of the opportunity to elect to be legally represented at the hearing<sup>6</sup>.

If an appropriate authority<sup>7</sup> is of the opinion that the sanctions of dismissal or requirement to resign should be available, it must cause the senior officer<sup>8</sup> concerned to be given notice in

writing, at the same time as he is given notice<sup>9</sup> of the decision to refer the case to a hearing, of the opportunity to elect to be legally represented at the hearing<sup>10</sup>.

A special constable<sup>11</sup> may not be dismissed, required to resign or reduced in rank by a decision taken in proceedings<sup>12</sup> unless he has been given an opportunity to elect to be legally represented at any hearing held in the course of those proceedings<sup>13</sup>. Where a special constable makes such an election, he may be represented at the hearing, at his option, either by counsel or by a solicitor<sup>14</sup>. Except in a case where a special constable has been given an opportunity to elect to be legally represented and has so elected, he may be represented at the hearing only by another police officer<sup>15</sup>.

1 For the meaning of 'supervising officer' see PARA 252 ante.

2 As to sanctions see PARA 273 post.

3 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

4 For the meaning of 'writing' see PARA 115 note 9 ante.

5 *Ie* under the Police (Conduct) Regulations 2004, SI 2004/645, reg 14: see PARA 258 ante.

6 *Ibid* reg 17(1). The notice must also contain details of the effect of the Police Act 1996 s 84(1)-(3) (see PARA 247 ante) or of the Police (Conduct) Regulations 2004, SI 2004/645, reg 17(3)-(5) (see the text to notes 11-15 *infra*), as appropriate: reg 17(1).

7 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

8 For the meaning of 'senior officer' see PARA 246 note 2 ante.

9 *Ie* under the Police (Conduct) Regulations 2004, SI 2004/645, reg 14: see PARA 258 ante.

10 *Ibid* reg 17(2).

11 As to special constables see PARAS 108-112 ante.

12 *Ie* proceedings under the Police (Conduct) Regulations 2004, SI 2004/645.

13 *Ibid* reg 17(3) (reg 17(3), (4), (5) amended by SI 2006/594).

14 Police (Conduct) Regulations 2004, SI 2004/645, reg 17(4) (as amended: see note 13 *supra*).

15 *Ibid* reg 17(5) (as amended: see note 13 *supra*). For the meaning of 'police officer' see PARA 246 note 2 ante.

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### 261. Procedure on receipt of notice.

The officer concerned<sup>1</sup> must be invited to state in writing<sup>2</sup>, within 14 days of the date on which he is notified that the last of the documents required<sup>3</sup> to be supplied to him has been so supplied: (1) whether or not he accepts that his conduct did not meet the appropriate



standard<sup>4</sup>; (2) in an appropriate case<sup>5</sup>, whether he wishes to be legally represented at the hearing<sup>6</sup>; (3) whether he proposes to call any witnesses to relevant facts at the hearing and the names and addresses of any such witnesses whose attendance he wishes to be secured<sup>7</sup>.

Any witness whose attendance the officer concerned wishes to be secured who is a member of a police force<sup>8</sup> must be ordered to attend at the hearing of the case, and the appropriate authority<sup>9</sup> (in the case of a senior officer<sup>10</sup>) or supervising officer<sup>11</sup> (in any other case), where so requested, must cause any other such witnesses to be given due notice that their attendance is desired and of the time and place of the hearing<sup>12</sup>.

Nothing in these provisions requires a hearing to be adjourned where a witness is unable or unwilling to attend the hearing<sup>13</sup>.

- 1 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.
- 2 For the meaning of 'writing' see PARA 115 note 9 ante.
- 3 le by the Police (Conduct) Regulations 2004, SI 2004/645, reg 14(1): see PARA 258 ante.
- 4 Ibid reg 18(1)(a). For the meaning of 'appropriate standard' see PARA 249 note 2 ante.
- 5 le a case where ibid reg 17 (see PARA 260 ante) applies.
- 6 Ibid reg 18(1)(b).
- 7 Ibid reg 18(1)(c).
- 8 For the meaning of 'police force' see PARA 102 note 11 ante.
- 9 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.
- 10 For the meaning of 'senior officer' see PARA 246 note 2 ante.
- 11 For the meaning of 'supervising officer' see PARA 252 ante.
- 12 Police (Conduct) Regulations 2004, SI 2004/645, reg 18(2).
- 13 Ibid reg 18(3).

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### **262. Persons conducting the hearing.**

Where a case concerning an officer other than a senior officer<sup>1</sup> is referred to a hearing it must be heard by three police officers<sup>2</sup> appointed by the chief officer<sup>3</sup> concerned who must not be interested parties<sup>4</sup>. Subject to the provisions relating to the remission of cases<sup>5</sup>, one such officer must be of at least the rank of assistant chief constable or, where the officer concerned is a member of the City of London or metropolitan police force<sup>6</sup>, of at least the rank of commander, who is the presiding officer<sup>7</sup>. The presiding officer must be assisted by two police officers of at least the rank of superintendent<sup>8</sup>.

Where a case concerning a senior officer is referred to a hearing it must be heard by a tribunal consisting of a single person selected and appointed by the appropriate authority<sup>9</sup> from a list of persons nominated by the Lord Chancellor<sup>10</sup>. To assist the tribunal on matters pertaining to the police there must also be appointed by the appropriate authority one or more assessors selected by that authority with the approval of the tribunal, one of whom is or has been a chief officer of police<sup>11</sup>.

1 For the meaning of 'officer other than a senior officer' see PARA 249 note 17 ante. For the meaning of 'senior officer' see PARA 246 note 2 ante.

2 For the meaning of 'police officer' see PARA 246 note 2 ante.

3 'Chief officer' is not defined in the Police (Conduct) Regulations 2004, SI 2004/645. For the meaning of 'chief officer of police' in the Police Act 1996 see PARA 105 note 7 ante.

4 Police (Conduct) Regulations 2004, SI 2004/645, reg 19(1). This provision is expressed to be subject to reg 19(5): see note 8 infra. Such a tribunal is a judicial body acting judicially and the rule of absolute immunity from suit applies to it in relation to proceedings before it. Thus it is not possible to bring a complaint under the Sex Discrimination Act 1975 alleging discrimination in the course of a disciplinary hearing: *Heath v Metropolitan Police Comr* [2004] EWCA Civ 943, [2005] ICR 329, [2005] IRLR 270. See also *Lake v British Transport Police* [2006] All ER (D) 04 (Oct), EAT. As to such immunity see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 197 et seq. As to the Sex Discrimination Act 1975 see DISCRIMINATION vol 13 (2007 Reissue) PARA 337 et seq.

5 Is subject to the Police (Conduct) Regulations 2004, SI 2004/645, reg 33: see PARA 271 post.

6 A reference in *ibid* reg 19 to a member of a police force includes a reference to a special constable appointed for the area of that force: reg 19(6). For the meaning of 'police force' see PARA 102 note 11 ante. As to special constables see PARAS 108-112 ante. As to police areas see PARA 136 ante. As to the metropolitan police force see PARA 137 ante; and as to the City of London police force see PARA 138 ante.

7 *Ibid* reg 19(2). As to ranks see PARA 230 ante.

8 *Ibid* reg 19(3). Where the officer concerned is a superintendent or a chief superintendent, the presiding officer must be assisted by two officers of the rank of assistant chief constable or, if the assisting officers are members of the City of London or metropolitan police force, of at least the rank of commander, who must, unless the officer concerned is a member of the metropolitan police force, be from a different force or forces from the officer concerned: reg 19(4). In a case where the hearing arises from a complaint or conduct matter which has been the subject of an investigation under the Police Reform Act 2002 Sch 3 para 17, 18 or 19 (see PARAS 371-372, 374 post), the Police (Conduct) Regulations 2004, SI 2004/645, reg 19(3) does not apply and the presiding officer must be assisted by two persons of whom one is a police officer of at least the rank of superintendent (or, if the officer concerned is a superintendent or chief superintendent, of at least the rank of an assisting officer under reg 19(4)) and the other is a person selected by the police authority for the force concerned from a list of candidates maintained by that authority: reg 19(5). For the meaning of 'police authority' see PARA 139 note 1 ante.

9 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

10 Police (Conduct) Regulations 2004, SI 2004/645, reg 20(1). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. As to the application of the rule of absolute immunity from suit in relation to proceedings before such a tribunal see *Heath v Metropolitan Police Comr* [2004] EWCA Civ 943, [2005] ICR 329, [2005] IRLR 270; *Lake v British Transport Police* [2006] All ER (D) 04 (Oct), EAT; and note 4 supra.

11 Police (Conduct) Regulations 2004, SI 2004/645, reg 20(2). However, there must not be so appointed: (1) a person who is one of Her Majesty's Inspectors of Constabulary (reg 20(2)(a)); (2) the chief officer or former chief officer of any force under whom the senior officer concerned has served as a senior officer in the previous five years (reg 20(2)(b)); (3) a member, officer or servant of the appropriate authority or of any local authority which appoints any member of the appropriate authority (reg 20(2)(c)). As to Her Majesty's Inspectors of Constabulary see PARA 206 ante.

## UPDATE

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## **262 Persons conducting the hearing**

NOTES 4, 10--*Lake*, cited, reversed, [2007] EWCA Civ 424, [2007] All ER (D) 77 (May) (judicial proceedings before police disciplinary board; board was a judicial body and its members enjoyed judicial immunity if the manner in which the board conducted proceedings had been challenged as biased or unfair or as in itself giving rise to a claim).

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## **263. Documents to be supplied.**

Where the officer concerned<sup>1</sup> is not a senior officer<sup>2</sup>, or is a senior officer and the appropriate authority<sup>3</sup> does not proceed<sup>4</sup> without a hearing<sup>5</sup>, and he accepts<sup>6</sup> that his conduct fell short of the appropriate standard<sup>7</sup>, a summary of the facts of the case must be prepared, a copy of which must be supplied to the officer concerned at least 14 days before the hearing<sup>8</sup>. If the officer concerned does not agree with the summary of facts, he may submit a response within seven days of receipt of the summary<sup>9</sup>. Where the officer concerned does not accept that his conduct fell short of the appropriate standard, no summary of facts is to be prepared<sup>10</sup>.

There must be supplied to the tribunal or, as the case may be, to the persons conducting the hearing<sup>11</sup> a copy of the notice<sup>12</sup> of the decision to refer the case to a hearing<sup>13</sup>, and a copy of any summary of facts<sup>14</sup> and of any response from the officer concerned<sup>15</sup>.

1 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

2 Police (Conduct) Regulations 2004, SI 2004/645, reg 21(1)(a). For the meaning of 'senior officer' see PARA 246 note 2 ante.

3 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

4 Ie as mentioned in the Police (Conduct) Regulations 2004, SI 2004/645, reg 13(1) or (2): see PARA 257 ante.

5 Ibid reg 21(1)(b).

6 Ie in accordance with ibid reg 18: see PARA 261 ante.

7 For the meaning of 'appropriate standard' see PARA 249 note 2 ante.

8 Police (Conduct) Regulations 2004, SI 2004/645, reg 21(1).

9 Ibid reg 21(2).

10 Ibid reg 21(3).

11 As to the persons conducting the hearing see PARA 262 ante.

12 Ie the notice given under the Police (Conduct) Regulations 2004, SI 2004/645, reg 14: see PARA 258 ante.

13 Ibid reg 22(a).

14 Ie prepared under ibid reg 21: see the text to notes 1-10 supra.

15 Ibid reg 22(b).

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### **264. Representation.**

In the case of an officer other than a senior officer<sup>1</sup>, unless the officer concerned<sup>2</sup> has given notice<sup>3</sup> that he wishes to be legally represented, the supervising officer<sup>4</sup> must appoint a police officer<sup>5</sup> to present the case<sup>6</sup>. If the officer has given notice that he wishes to be legally represented, the supervising officer may either appoint a police officer to present the case or may instruct an independent solicitor or counsel to present the case<sup>7</sup>. The officer concerned may conduct his case either in person or by a police officer selected by him or, if he has given notice that he wishes to be legally represented, by counsel or a solicitor<sup>8</sup>.

In the case of a senior officer, the case must be presented by the independent solicitor<sup>9</sup> instructed to serve the notice of the decision to refer the case to a hearing<sup>10</sup> or by some other independent solicitor or counsel<sup>11</sup>. The senior officer concerned may conduct his case either in person or by a representative<sup>12</sup>.

These provisions<sup>13</sup> have effect subject to the provisions<sup>14</sup> relating to the participation of the Independent Police Complaints Commission<sup>15</sup>.

1 For the meaning of 'officer other than a senior officer' see PARA 249 note 17 ante. For the meaning of 'senior officer' see PARA 246 note 2 ante.

2 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

3 Ie in accordance with the Police (Conduct) Regulations 2004, SI 2004/645, reg 18: see PARA 261 ante.

4 For the meaning of 'supervising officer' see PARA 252 ante.

5 For the meaning of 'police officer' see PARA 246 note 2 ante.

6 Police (Conduct) Regulations 2004, SI 2004/645, reg 23(1).

7 Ibid reg 23(2).

8 Ibid reg 23(3).

9 Ie the independent solicitor mentioned in ibid reg 14(4): see PARA 258 ante.

10 Ibid reg 24(1)(a).

11 Ibid reg 24(1)(b). 'Independent solicitor' in reg 24(1)(b) has the same meaning as in reg 14 (see PARA 258 note 3 ante): reg 24(2).

12 Ibid reg 24(3).

13 Ie ibid regs 23, 24.

14 *le ibid* reg 25: see PARA 265 post.

15 *Ibid* regs 23(4), 24(4). As to the Independent Police Complaints Commission see PARA 316 et seq post.

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### **265. Participation by the Independent Police Complaints Commission.**

In any case where the Independent Police Complaints Commission<sup>1</sup> has given a direction<sup>2</sup>, the Commission may itself present the case<sup>3</sup>. If the case concerns a senior officer<sup>4</sup>, or an officer other than a senior officer<sup>5</sup> and that officer has given notice<sup>6</sup> that he wishes to be legally represented<sup>7</sup>, the Commission may instruct an independent solicitor or counsel to present the case<sup>8</sup>.

Where the Commission decides to present the case or to instruct an independent solicitor or counsel: (1) it must notify the appropriate authority<sup>9</sup> or supervising officer<sup>10</sup> (as the case may be)<sup>11</sup>, the complainant<sup>12</sup>, and any interested person<sup>13</sup>, of its decision and the reasons for that decision<sup>14</sup>; (2) the appropriate authority or supervising officer must notify the officer concerned of the Commission's participation<sup>15</sup>; and (3) neither the appropriate authority or supervising officer, nor any solicitor or counsel instructed by either of them, may present the case<sup>16</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq post.

2 *le* under the Police Reform Act 2002 s 13, Sch 3 para 27(4)(a): see PARA 390 post.

3 Police (Conduct) Regulations 2004, SI 2004/645, reg 25(1).

4 *Ibid* reg 25(2)(a). For the meaning of 'senior officer' see PARA 246 note 2 ante.

5 For the meaning of 'officer other than a senior officer' see PARA 249 note 17 ante.

6 *le* in accordance with the Police (Conduct) Regulations 2004, SI 2004/645, reg 18: see PARA 261 ante.

7 *Ibid* reg 25(2)(b).

8 *Ibid* reg 25(2).

9 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

10 For the meaning of 'supervising officer' see PARA 252 ante.

11 Police (Conduct) Regulations 2004, SI 2004/645, reg 25(3)(a)(i).

12 *Ibid* reg 25(3)(a)(ii).

13 *Ibid* reg 25(3)(a)(iii). An interested person is such a person under the Police Reform Act 2002 s 21(5) (see PARA 338 post): see the Police (Conduct) Regulations 2004, SI 2004/645, reg 25(3)(a)(iii).

14 *Ibid* reg 25(3)(a).

15 Ibid reg 25(3)(b).

16 Ibid reg 25(3)(c).

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### 266. Procedure at hearing.

The tribunal or officers conducting the hearing<sup>1</sup> may from time to time adjourn the hearing if it appears to be necessary or expedient to do so for the due hearing of the case<sup>2</sup>. Where the case concerns an officer other than a senior officer<sup>3</sup>, any decision of the officers conducting the hearing must be based on a simple majority, but must not indicate whether it was taken unanimously or by a majority<sup>4</sup>.

Subject to any statutory provision<sup>5</sup>, the tribunal or, as the case may be, the officers conducting the hearing may determine their own procedure<sup>6</sup>. The tribunal or officers conducting the hearing must review the facts of the case and decide whether or not the conduct of the officer concerned<sup>7</sup> met the appropriate standard<sup>8</sup>. The tribunal or officers conducting the hearing may not find that the conduct of the officer concerned failed to meet the appropriate standard unless the conduct is admitted by the officer concerned<sup>9</sup>, or proved by the person presenting the case on the balance of probabilities to have failed to meet that standard<sup>10</sup>.

Where evidence is given at a hearing that the officer concerned, at any time after he was given written notice<sup>11</sup> of investigation, on being questioned by an investigating officer<sup>12</sup> failed to mention orally or in writing<sup>13</sup> any fact relied on in his defence at that hearing, being a fact which in the circumstances existing at the time the officer concerned could reasonably have been expected to mention when so questioned or when making<sup>14</sup> a statement<sup>15</sup>, the tribunal or officers conducting the hearing may draw such inferences from the failure as appear proper<sup>16</sup>.

Where the case concerns an officer other than a senior officer, if the officers conducting the hearing decide that the conduct of the officer concerned did not meet the appropriate standard, they must decide whether it would be reasonable to impose any, and if so which, sanction<sup>17</sup>. Where the case concerns a senior officer, the tribunal must, as soon as possible after the hearing, submit a report to the appropriate authority<sup>18</sup>, together with a copy to the senior officer concerned, setting out: (1) the finding<sup>19</sup> of the tribunal<sup>20</sup>; (2) if that finding was that the conduct of the senior officer concerned failed to meet the appropriate standard, a recommendation as to any sanction which<sup>21</sup> in its opinion should be imposed<sup>22</sup>; and (3) any other matter arising out of the hearing which it desires to bring to the notice of the appropriate authority<sup>23</sup>.

1 As to the persons conducting the hearing see PARA 262 ante.

2 Police (Conduct) Regulations 2004, SI 2004/645, reg 26(1).

3 For the meaning of 'officer other than a senior officer' see PARA 249 note 17 ante. For the meaning of 'senior officer' see PARA 246 note 2 ante.

4 Police (Conduct) Regulations 2004, SI 2004/645, reg 26(2).

- 5    Ie subject to the provisions of the Police (Conduct) Regulations 2004, SI 2004/645.
- 6    Ibid reg 27(1).
- 7    For the meaning of 'the officer concerned' see PARA 249 note 3 ante.
- 8    Police (Conduct) Regulations 2004, SI 2004/645, reg 27(2). For the meaning of 'appropriate standard' see PARA 249 note 2 ante.
- 9    Ibid reg 27(3)(a).
- 10   Ibid reg 27(3)(b). As to the balance of probabilities see CIVIL PROCEDURE vol 11 (2009) PARA 775.
- 11   Ie under ibid reg 9: see PARA 254 ante.
- 12   As to investigating officers see PARA 253-255 ante.
- 13   For the meaning of 'writing' see PARA 115 note 9 ante.
- 14   Ie under the Police (Conduct) Regulations 2004, SI 2004/645, reg 9(d): see PARA 254 ante.
- 15   Ibid reg 27(4).
- 16   Ibid reg 27(5). Regulation 27(5) does not apply in relation to a failure to mention a fact if the failure occurred before 1 April 2004 (ie the day on which reg 27 was brought into force): see regs 1, 27(6).
- 17   Ibid reg 27(7). As to sanctions see PARA 273 post.
- 18   For the meaning of 'appropriate authority' see PARA 249 note 1 ante.
- 19   Ie under the Police (Conduct) Regulations 2004, SI 2004/645, reg 27(2): see the text to notes 7-8 supra.
- 20   Ibid reg 27(8)(a).
- 21   Ie subject to ibid reg 35(3): see PARA 273 post.
- 22   Ibid reg 27(8)(b).
- 23   Ibid reg 27(8)(c).

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### **267. Attendance of officer concerned at hearing.**

The officer concerned<sup>1</sup> must attend the hearing<sup>2</sup>. If he fails to attend the hearing it may be proceeded with and concluded in his absence<sup>3</sup>. Where the officer concerned informs the tribunal or presiding officer<sup>4</sup> in advance that he is unable to attend due to ill-health or some other unavoidable reason, the hearing may be adjourned<sup>5</sup>.

Where, because of the absence of the officer concerned, it is impossible to comply with any statutory procedure<sup>6</sup>, that procedure may be dispensed with<sup>7</sup>.

- 1 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.
- 2 Police (Conduct) Regulations 2004, SI 2004/645, reg 28(1).
- 3 Ibid reg 28(2).
- 4 As to the tribunal and the presiding officer see PARA 262 ante.
- 5 Police (Conduct) Regulations 2004, SI 2004/645, reg 28(3).
- 6 Ie any procedure set out in the Police (Conduct) Regulations 2004, SI 2004/645. As to procedure generally see PARA 266 ante.
- 7 Ibid reg 28(4).

## **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **268. Attendance of complainant and interested persons at hearing.**

Where a complaint or a conduct matter<sup>1</sup> falls under<sup>2</sup> the Police Reform Act 2002<sup>3</sup>, a complainant<sup>4</sup> or interested person<sup>5</sup> is entitled to attend the hearing up to and including the point at which the hearing decides whether the conduct of the officer concerned<sup>6</sup> met the appropriate standard<sup>7</sup>. A complainant and interested person may each nominate and be accompanied by up to three other persons (or such higher number as the tribunal or presiding officer may permit)<sup>8</sup>.

Where a complainant or interested person, or any person allowed to accompany him, is to be called as a witness at the hearing, he and any person allowed to accompany him is not allowed to attend before he gives his evidence<sup>9</sup>. Where the officer concerned gives evidence, then, after the presenting officer<sup>10</sup> has had an opportunity of cross-examining him, the tribunal or presiding officer must put to him any questions which the complainant or interested person requests should be so put and might have been properly so put by the presenting officer or, at the tribunal or presiding officer's discretion, may allow the complainant or interested person to put such questions to the officer concerned<sup>11</sup>.

- 1 For the meaning of 'conduct matter' see PARA 252 note 7 ante.
- 2 Ie under the Police Reform Act 2002 Pt 2 (ss 9-29): see PARA 316 et seq post.
- 3 Police (Conduct) Regulations 2004, SI 2004/645, reg 29(1).
- 4 'Complainant' means the originator of the complaint notwithstanding that it was transmitted to the chief officer concerned or appropriate authority by some other person or by the Independent Police Complaints Commission or some other body: see ibid reg 29(6). 'Chief officer' is not defined in the Police (Conduct) Regulations 2004, SI 2004/645. For the meaning of 'chief officer of police' in the Police Act 1996 see PARA 105 note 7 ante. For the meaning of 'appropriate authority' see PARA 249 note 1 ante. As to the Independent Police Complaints Commission see PARA 316 et seq post.



5 'Interested person' has the meaning given by the Police Reform Act 2002 s 21(5) (see PARA 338 post): Police (Conduct) Regulations 2004, SI 2004/645, reg 29(7).

6 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

7 Police (Conduct) Regulations 2004, SI 2004/645, reg 29(2). This provision is expressed to be notwithstanding anything in reg 30(1) (see PARA 269 post), but subject to the provisions of regs 30-45 (see PARAS 269-279 post). For the meaning of 'appropriate standard' see PARA 249 note 2 ante.

8 Ibid reg 29(3). As to the tribunal and the presiding officer see PARA 262 ante.

9 Ibid reg 29(4).

10 As to the presenting officer see PARA 264 ante.

11 Police (Conduct) Regulations 2004, SI 2004/645, reg 29(5).

## UPDATE

### 245-279 Conduct of Police Officers

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

### 268 Attendance of complainant and interested persons at hearing

NOTES 1-7--See *R (on the application of Independent Police Complaints Commission) v Chief Constable of West Midlands Police* [2007] All ER (D) 73 (Nov) (no bar to prevent complainant or other interested persons from attending review meeting).

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### 269. Attendance of others at hearing.

Subject to the provisions regarding the attendance at the hearing of a complainant or interested party<sup>1</sup> and to the following provisions<sup>2</sup>, the hearing is in private<sup>3</sup>. Where a case arises from a complaint or conduct matter which has been investigated<sup>4</sup> by the Independent Police Complaints Commission and the Commission considers that because of its gravity or other exceptional circumstances it would be in the public interest to do so, the Commission may, having consulted the appropriate authority<sup>5</sup>, the officer concerned<sup>6</sup>, the complainant and any witnesses, direct that the whole or part of the hearing is to be held in public<sup>7</sup>.

The officer concerned may be accompanied at the hearing by another police officer<sup>8</sup> and, at the discretion of the tribunal or presiding officer<sup>9</sup> as the case may be, by any other person (or, in a case where the complainant or an interested person is accompanied by a greater number of persons, by that number of persons<sup>10</sup>). The tribunal or presiding officer may allow witnesses to be accompanied at the hearing by a relative or friend<sup>11</sup>. No person allowed to attend may either intervene in, or interrupt, the hearing; and if he behaves in a disorderly or abusive manner, or otherwise misconducts himself, the tribunal or presiding officer may exclude him from the remainder of the hearing<sup>12</sup>.

The tribunal or presiding officer may impose such conditions as it or he sees fit relating to the attendance<sup>13</sup> of persons at the hearing<sup>14</sup>. Where it appears to the tribunal or presiding officer

that any person may, in giving evidence, disclose information which, in the public interest, ought not to be disclosed to a member of the public it or he may require any member of the public including the complainant and any person allowed to accompany the complainant or any witness to withdraw while the evidence is given<sup>15</sup>.

- 1    Ie subject to the Police (Conduct) Regulations 2004, SI 2004/645, reg 29: see PARA 268 ante.
- 2    Ie ibid reg 30(2)-(8): see the text to notes 3-14 infra.
- 3    Ibid reg 30(1). Any member of the Independent Police Complaints Commission is entitled to attend the hearing in a case to which reg 29 (see PARA 268 ante) applies or which arises from a complaint or conduct matter to which the Police Reform Act 2002 s 13, Sch 3 para 17, 18 or 19 (see PARAS 371-372, 374 post) applies: Police (Conduct) Regulations 2004, SI 2004/645, reg 30(2). As to the Independent Police Complaints Commission see PARA 316 et seq post. For the meaning of 'conduct matter' see PARA 252 note 7 ante.
- 4    Ie under the Police Reform Act 2002 Sch 3 para 19: see PARA 374 post.
- 5    For the meaning of 'appropriate authority' see PARA 249 note 1 ante.
- 6    For the meaning of 'the officer concerned' see PARA 249 note 3 ante.
- 7    Police (Conduct) Regulations 2004, SI 2004/645, reg 30(5). A direction under reg 30(5), together with the reasons for that direction, must be notified within five days to the persons so consulted: reg 30(6).
- 8    For the meaning of 'police officer' see PARA 246 note 2 ante.
- 9    As to the tribunal and the presiding officer see PARA 262 ante.
- 10   Police (Conduct) Regulations 2004, SI 2004/645, reg 30(3). As to the attendance at a hearing of the complainant or an interested person see PARA 268 ante.
- 11   Ibid reg 30(4).
- 12   Ibid reg 30(7). This provision is expressed to be subject to reg 29 (see PARA 268 ante) and reg 30(2)-(8): see the text and notes 1-2 supra.
- 13   Ie under ibid reg 29 (see PARA 268 ante) and reg 30.
- 14   Ibid reg 30(8).
- 15   Ibid reg 31.

## **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **270. Statements in lieu of oral evidence.**

Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, must be determined by the tribunal or presiding officer<sup>1</sup>. With the consent of the officer concerned<sup>2</sup>, the tribunal or presiding officer may allow any document to be adduced in evidence during the hearing notwithstanding that a copy thereof has not been supplied<sup>3</sup> to the officer concerned<sup>4</sup>.

1 Police (Conduct) Regulations 2004, SI 2004/645, reg 32(1). As to the tribunal and the presiding officer see PARA 262 ante.

2 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

3 le in accordance with the Police (Conduct) Regulations 2004, SI 2004/645, reg 14(1): see PARA 258 ante.

4 Ibid reg 32(2).

## **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **271. Remission of cases: officers other than senior officers.**

The hearing of the case must, in certain circumstances<sup>1</sup>, or may, in certain other circumstances<sup>2</sup>, be remitted by the presiding officer<sup>3</sup> concerned to a police officer<sup>4</sup> of equivalent rank in the force concerned or to a police officer of equivalent rank in another force who, at the presiding officer's request, has agreed to act as the presiding officer in the matter<sup>5</sup>.

The circumstances in which a case must be so remitted are if: (1) the presiding officer is an interested party otherwise than in his capacity as such<sup>6</sup>; or (2) there would not, because the officer concerned<sup>7</sup> was not given notice<sup>8</sup> of the opportunity to elect to be legally represented at the hearing, be available on a finding against him any of the sanctions of dismissal, requirement to resign or reduction in rank, and it appears to the presiding officer concerned that those sanctions ought to be so available and that accordingly it would be desirable for there to be another hearing at which the officer concerned could, if he so wished, be so represented<sup>9</sup>.

A case not falling within the above provision<sup>10</sup> may be remitted by the presiding officer<sup>11</sup> if, either before or during the hearing, he considers remission appropriate<sup>12</sup>.

1 Police (Conduct) Regulations 2004, SI 2004/645, reg 33(1)(a). The circumstances are those set out in reg 33(2): see the text to notes 6-9 infra.

2 Ibid reg 33(1)(b). The circumstances are those set out in reg 33(5): see the text to notes 10-12 infra.

3 As to the presiding officer see PARA 262 ante.

4 For the meaning of 'police officer' see PARA 246 note 2 ante.

5 Police (Conduct) Regulations 2004, SI 2004/645, reg 33(1). See *R (on the application of Bennion) v Chief Constable of the Merseyside Police* [2001] EWCA Civ 638, [2002] ICR 136, [2001] IRLR 442.

6 Police (Conduct) Regulations 2004, SI 2004/645, reg 33(2)(a).

7 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

8 le under the Police (Conduct) Regulations 2004, SI 2004/645, reg 17: see PARA 260 ante.

9 Ibid reg 33(2)(b). Where a case is remitted to another police officer under reg 33(2)(b) notice in writing must be served on the officer concerned inviting him to elect, within 14 days of the receipt thereof, to be legally represented at the hearing before that officer: reg 33(3). An officer remitting a case under reg 33(2)(b) must not give to the officer to whom the case has been remitted any indication of his assessment of the case or of the sanction which might be imposed: reg 33(4). For the meaning of 'writing' see PARA 115 note 9 ante. As to sanctions generally see PARA 273 post.

10 Ie not falling within ibid reg 33(2): see the text to notes 6-9 supra.

11 Ie in accordance with ibid reg 33(1): see the text to notes 1-5 supra.

12 Ibid reg 33(5).

## **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **272. Record of hearing.**

A verbatim record of the proceedings at the hearing must be taken and, if the officer concerned<sup>1</sup> so requests within the time limit for any appeal<sup>2</sup> and after he has lodged notice of appeal<sup>3</sup>, a transcript of the record or a copy thereof must be supplied to him by the tribunal or presiding officer<sup>4</sup>.

In a case which relates to a senior officer<sup>5</sup>, a transcript of the record must be made and sent to the appropriate authority<sup>6</sup>.

1 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

2 As to requests for a review of a decision see PARA 276 post; and as to appeals see PARA 300 et seq post.

3 Ie in accordance with rules made under the Police Act 1996 s 85: see PARA 300 post.

4 Police (Conduct) Regulations 2004, SI 2004/645, reg 34(1) (amended by SI 2006/594). As to the tribunal and the presiding officer see PARA 262 ante.

5 For the meaning of 'senior officer' see PARA 246 note 2 ante.

6 Police (Conduct) Regulations 2004, SI 2004/645, reg 34(2). For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

## **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **273. Sanctions.**

A member of a police force<sup>1</sup> of the rank<sup>2</sup> of chief superintendent or below may not be dismissed, required to resign or reduced in rank by a decision taken in proceedings<sup>3</sup> unless he has been given an opportunity to elect to be legally represented at any hearing held in the course of those proceedings<sup>4</sup>. Subject to this provision, the persons conducting the hearing<sup>5</sup> in the case of an officer other than a senior officer<sup>6</sup> may: (1) record a finding that the conduct of the officer concerned<sup>7</sup> failed to meet the appropriate standard<sup>8</sup> but take no further action<sup>9</sup>; or (2) impose any of the following sanctions<sup>10</sup>. The sanctions are:

- 81 (a) dismissal from the force<sup>11</sup>;
- 82 (b) requirement to resign from the force as an alternative to dismissal taking effect either forthwith or on such date as may be specified in the decision<sup>12</sup>;
- 83 (c) reduction in rank<sup>13</sup>;
- 84 (d) fine<sup>14</sup>;
- 85 (e) in the case of a special constable only, suspension from all or from operational duties only for a period of up to three months<sup>15</sup>;
- 86 (f) reprimand<sup>16</sup>;
- 87 (g) caution<sup>17</sup>.

Where the case concerns a senior officer, on receipt of the report of a tribunal<sup>18</sup>, the appropriate authority<sup>19</sup> must decide whether to dismiss the case or: (i) to record a finding that the conduct of the senior officer concerned failed to meet the appropriate standard but to take no further action<sup>20</sup>; or (ii) to record such a finding and impose a sanction<sup>21</sup>. The sanctions which may be imposed on a senior officer are:

- 88 (A) dismissal from the force<sup>22</sup>;
- 89 (B) requirement to resign from the force as an alternative to dismissal taking effect either forthwith or on such date as may be specified in the recommendation or decision<sup>23</sup>;
- 90 (C) fine<sup>24</sup>;
- 91 (D) reprimand<sup>25</sup>.

Any sanction imposed<sup>26</sup>, except a requirement to resign, has immediate effect<sup>27</sup>. A fine must be such that, if it were recovered by way of deductions from the pay of the officer concerned during the period of 13 weeks following the imposition of the sanction, the aggregate sum which might be so deducted in respect of any one week (whether on account of one or more fines) would not exceed one seventh of his weekly pay<sup>28</sup>.

Where the question of the sanction to be imposed is being considered, the tribunal or persons conducting the hearing must have regard to the record of police service of the officer concerned as shown on his personal record<sup>29</sup> and may receive evidence from any witness whose evidence would, in its or their opinion, assist in determining the question<sup>30</sup>; and the officer concerned, or his representative, must be afforded an opportunity to make oral or, if appropriate, written<sup>31</sup> representations as respects the question or to adduce relevant evidence<sup>32</sup>.

1 For the meaning of 'police force' see PARA 102 note 11 ante.

- 2 As to ranks see PARA 230 ante.
- 3 le in proceedings under regulations made in accordance with the Police Act 1996 s 50(3)(a): see PARA 228 ante.
- 4 Ibid s 84(1) (amended by the Criminal Justice and Police Act 2001 s 125(3), (4)(c)). As to legal representation see PARA 260 ante. As to remission of cases where legal representation is considered necessary see PARA 271 ante.
- 5 As to the persons conducting the hearing see PARA 262 ante.
- 6 For the meaning of 'officer other than a senior officer' see PARA 249 note 17 ante. For the meaning of 'senior officer' see PARA 246 note 2 ante.
- 7 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.
- 8 For the meaning of 'appropriate standard' see PARA 249 note 2 ante.
- 9 Police (Conduct) Regulations 2004, SI 2004/645, reg 35(1)(a).
- 10 Ibid reg 35(1)(b).
- 11 Ibid reg 35(2)(a).
- 12 Ibid reg 35(2)(b).
- 13 Ibid reg 35(2)(c).
- 14 Ibid reg 35(2)(d).
- 15 Ibid reg 35(2)(e). As to special constables see PARAS 108-112 ante. For the meaning of 'month' see PARA 140 note 17 ante.
- 16 Ibid reg 35(2)(f).
- 17 Ibid reg 35(2)(g).
- 18 le under ibid reg 27(8): see PARA 266 ante.
- 19 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.
- 20 Police (Conduct) Regulations 2004, SI 2004/645, reg 35(3)(a).
- 21 Ibid reg 35(3)(b).
- 22 Ibid reg 35(4)(a).
- 23 Ibid reg 35(4)(b).
- 24 Ibid reg 35(4)(c).
- 25 Ibid reg 35(4)(d).
- 26 le under ibid reg 35(1) or (3): see the text to notes 5-10, 18-21 supra.
- 27 Ibid reg 35(5).
- 28 Ibid reg 35(6).
- 29 As to personal records see PARA 395 post.
- 30 Police (Conduct) Regulations 2004, SI 2004/645, reg 36(1)(a). Regulation 32(1) (see PARA 270 ante) applies to proceedings at which such evidence as is referred to in reg 36(1)(a) or (b) (see the text to notes 31-32 infra) is given or such oral representations as are referred to in reg 36(1)(b) are made as it applies to the proceedings before the persons conducting the hearing or the tribunal: reg 36(2).
- 31 For the meaning of 'written' see PARA 115 note 9 ante.

32 Police (Conduct) Regulations 2004, SI 2004/645, reg 36(1)(b). See also note 30 supra.

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Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **274. Notification of finding.**

In the case of an officer other than a senior officer<sup>1</sup>, the officer concerned<sup>2</sup> must be informed orally of the finding and of any sanction<sup>3</sup> imposed at the conclusion of the hearing, and be provided with a written<sup>4</sup> notification and summary of the reasons within three days<sup>5</sup>. In the case of a senior officer, the officer concerned must, as soon as possible after the appropriate authority<sup>6</sup> has taken its decision<sup>7</sup>, be provided with a written notification of the finding and of any sanction imposed<sup>8</sup>.

A written notification under these provisions must include: (1) in a case where the officer concerned is a member of a police force<sup>9</sup>, notification of the right to appeal to a police appeals tribunal<sup>10</sup>; and (2) in the case of an officer other than a senior officer, notification of the right to request a review<sup>11</sup>.

In the case of a senior officer, a copy of the report of the tribunal<sup>12</sup> together with the decision of the appropriate authority must be sent by the appropriate authority to the Secretary of State<sup>13</sup>.

1 For the meaning of 'officer other than a senior officer' see PARA 249 note 17 ante. For the meaning of 'senior officer' see PARA 246 note 2 ante.

2 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

3 As to sanctions see PARA 273 ante.

4 For the meaning of 'written' see PARA 115 note 9 ante.

5 Police (Conduct) Regulations 2004, SI 2004/645, reg 37(1).

6 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

7 I.e. under the Police (Conduct) Regulations 2004, SI 2004/645, reg 35(3): see PARA 273 ante.

8 Ibid reg 37(2).

9 For the meaning of 'police force' see PARA 102 note 11 ante.

10 Police (Conduct) Regulations 2004, SI 2004/645, reg 37(3)(a). As to police appeals tribunals and appeals see PARA 300 et seq post.

11 Ibid reg 37(3)(b). As to reviews see PARAS 276-278 post.

12 As to the tribunal's report see PARA 266 ante.

13 Police (Conduct) Regulations 2004, SI 2004/645, reg 38. As to the Secretary of State see PARA 107 note 15 ante.

## **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **275. Expenses of hearing.**

In the case of a senior officer<sup>1</sup>, all the expenses of a hearing, including the costs of the senior officer concerned, are defrayed out of the police fund<sup>2</sup>. Any costs so payable are subject to taxation in such manner as the Secretary of State<sup>3</sup> may direct<sup>4</sup>.

1 For the meaning of 'senior officer' see PARA 246 note 2 ante.

2 Police (Conduct) Regulations 2004, SI 2004/645, reg 39(1) (amended by SI 2006/594). For the meaning of 'police fund' see PARA 167 note 3 ante. Except in the case of senior officers, a police authority does not have the power to defray the costs of representation of officers: *R v South Yorkshire Police Authority, ex p Booth* (2000) Times, 10 October, [2000] All ER (D) 1107, DC.

3 As to the Secretary of State see PARA 107 note 15 ante.

4 Police (Conduct) Regulations 2004, SI 2004/645, reg 39(2).

### **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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#### **(D) REVIEW OF DECISIONS**

### **276. Request for a review: officers other than senior officers.**

Where: (1) a sanction is imposed<sup>1</sup> on an officer other than a senior officer<sup>2</sup>; or (2) the persons conducting a hearing<sup>3</sup> decide that the conduct of an officer other than a senior officer failed to meet the appropriate standard<sup>4</sup> but decide not to impose a sanction<sup>5</sup>, the officer concerned<sup>6</sup> is entitled to request the chief officer<sup>7</sup> of the force concerned to review the finding or the sanction (if any) imposed or both the finding and the sanction<sup>8</sup>. Where the officer concerned is a member of the metropolitan police force or is a special constable appointed for the metropolitan police district<sup>9</sup>, the request is made to an assistant metropolitan police commissioner<sup>10</sup>. The officer requested to carry out the review is known as 'the reviewing officer'<sup>11</sup>.



A request for a review must be made to the reviewing officer in writing<sup>12</sup> within 14 days of receipt of the written summary of reasons for the finding at the hearing<sup>13</sup>, unless this period is extended by the reviewing officer<sup>14</sup>. The request for a review must state the grounds on which the review is requested and whether a meeting is requested<sup>15</sup>. The reviewing officer must hold a meeting with the officer concerned if requested to do so<sup>16</sup>.

- 1   le under the Police (Conduct) Regulations 2004, SI 2004/645, reg 35(1): see PARA 273 ante.
- 2   Ibid reg 40(1)(a). For the meaning of 'officer other than a senior officer' see PARA 249 note 17 ante. For the meaning of 'senior officer' see PARA 246 note 2 ante.
- 3   As to the persons conducting a hearing see PARA 262 ante.
- 4   For the meaning of 'appropriate standard' see PARA 249 note 2 ante.
- 5   Police (Conduct) Regulations 2004, SI 2004/645, reg 40(1)(b).
- 6   For the meaning of 'the officer concerned' see PARA 249 note 3 ante.
- 7   'Chief officer' is not defined in the Police (Conduct) Regulations 2004, SI 2004/645. For the meaning of 'chief officer of police' in the Police Act 1996 see PARA 105 note 7 ante.
- 8   Police (Conduct) Regulations 2004, SI 2004/645, reg 40(1).
- 9   As to the metropolitan police force and the metropolitan police district see PARA 137 ante. As to special constables see PARAS 108-112 ante.
- 10   See the Police (Conduct) Regulations 2004, SI 2004/645, reg 40(1). As to assistant metropolitan police commissioners see PARA 186 ante.
- 11   See ibid reg 40(1).
- 12   For the meaning of 'writing' see PARA 115 note 9 ante.
- 13   le given in accordance with the Police (Conduct) Regulations 2004, SI 2004/645, reg 37(1): see PARA 274 ante.
- 14   Ibid reg 40(2).
- 15   Ibid reg 40(3).
- 16   Ibid reg 41(1). Where a meeting is held, the officer concerned may be accompanied by another police officer and, in a case where reg 17 (see PARA 260 ante) applies, by counsel or a solicitor: reg 41(2). For the meaning of 'police officer' see PARA 246 note 2 ante.

## **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **277. Finding of the review.**

The officer concerned<sup>1</sup> must be informed of the finding of the reviewing officer<sup>2</sup> in writing<sup>3</sup> within three days of completion of the review<sup>4</sup>. The reviewing officer may confirm or overturn the decision of the hearing or he may impose a different sanction<sup>5</sup>, but he may not impose a

sanction greater than that imposed at the hearing<sup>6</sup>. The decision of the reviewing officer takes effect by way of substitution for the decision of the hearing and as from the date of that hearing<sup>7</sup>. Where as a result of the decision of the reviewing officer an officer who is a member of a police force<sup>8</sup> is dismissed, required to resign or reduced in rank he must be notified in writing of his right of appeal to a police appeals tribunal<sup>9</sup>.

1 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.

2 As to the reviewing officer see PARA 276 ante.

3 For the meaning of 'writing' see PARA 115 note 9 ante.

4 Police (Conduct) Regulations 2004, SI 2004/645, reg 42(1).

5 In which is specified in *ibid* reg 35(2): see PARA 273 ante.

6 *Ibid* reg 42(2). In a case where the Independent Police Complaints Commission has made a direction to an appropriate authority under the Police Reform Act 2002 s 13, Sch 3 para 27(4) (see PARA 390 post), the reviewing officer must notify the Commission of the outcome of the review and provide the Commission with a written record of the reasons for his determination: Police (Conduct) Regulations 2004, SI 2004/645, reg 42(5). As to the Independent Police Complaints Commission see PARA 316 et seq post. For the meaning of 'appropriate authority' see PARA 249 note 1 ante.

7 *Ibid* reg 42(3).

8 For the meaning of 'police force' see PARA 102 note 11 ante.

9 Police (Conduct) Regulations 2004, SI 2004/645, reg 42(4). As to police appeals tribunals and appeals see PARA 300 et seq post.

## 245-279 Conduct of Police Officers

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/A. CONDUCT OF POLICE OFFICERS/ (D) Review of Decisions/278. Hearing of review in absence of chief officer.

### 278. Hearing of review in absence of chief officer.

Subject to the following provisions<sup>1</sup>, where the chief officer<sup>2</sup> is an interested party, or the circumstances<sup>3</sup> in which the chief officer's powers may be exercised by a deputy chief constable or an assistant chief constable apply, the review must be conducted by the deputy chief constable or assistant chief constable designated<sup>4</sup> for this purpose<sup>5</sup>.

Where the officer concerned<sup>6</sup> is a member of the metropolitan police force, or is a special constable appointed for the metropolitan police district<sup>7</sup>, the review must be conducted by an assistant metropolitan police commissioner<sup>8</sup> who is not an interested party<sup>9</sup>.

Where the officer concerned is a member of the City of London police force, or is a special constable appointed for the area of that force<sup>10</sup>, the review must be conducted by the City of London Police Commissioner<sup>11</sup> or, if he is absent or an interested party, by the chief officer of another force who has agreed to act in that capacity or an assistant metropolitan police commissioner who has agreed to act in that capacity<sup>12</sup>.

- 1 le subject to the Police (Conduct) Regulations 2004, SI 2004/645, reg 43(2)-(4): see note 5 and the text to notes 6-12 *infra*.
- 2 'Chief officer' is not defined in the Police (Conduct) Regulations 2004, SI 2004/645. For the meaning of 'chief officer of police' in the Police Act 1996 see PARA 105 note 7 *ante*.
- 3 le the circumstances in *ibid* s 12A(1) or (2) (as added): see PARA 178 *ante*.
- 4 le designated under *ibid* s 12A(2) (as added): see PARA 178 *ante*.
- 5 Police (Conduct) Regulations 2004, SI 2004/645, reg 43(1). Where the deputy chief constable or designated assistant chief constable is absent or an interested party, the review must be conducted by the chief officer of another force who has agreed to act in that capacity: reg 43(2).
- 6 For the meaning of 'the officer concerned' see PARA 249 note 3 *ante*.
- 7 As to the metropolitan police force and the metropolitan police district see PARA 137 *ante*. As to special constables see PARAS 108-112 *ante*.
- 8 As to assistant metropolitan police commissioners see PARA 186 *ante*.
- 9 Police (Conduct) Regulations 2004, SI 2004/645, reg 43(3).
- 10 As to the City of London police force and the City of London police area see PARA 138 *ante*.
- 11 As to the City of London Police Commissioner see PARA 187 *ante*.
- 12 Police (Conduct) Regulations 2004, SI 2004/645, reg 43(4).

## **245-279 Conduct of Police Officers**

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **(E) SPECIAL CASES**

#### **279. Special cases.**

Special provision is made in respect of any case in which a report, complaint or allegation is made which indicates that the conduct of a police officer<sup>1</sup> did not meet the appropriate standard<sup>2</sup> and in respect of which certain conditions are satisfied and the appropriate authority<sup>3</sup> or appropriate officer<sup>4</sup> has issued a certificate<sup>5</sup> certifying the case as a special case<sup>6</sup>. The conditions to be satisfied are:

- 92 (1) the report, complaint or allegation indicates that the conduct of the officer concerned<sup>7</sup> is of a serious nature and that an imprisonable offence<sup>8</sup> may have been committed by the officer concerned<sup>9</sup>; and
- 93 (2) the conduct is such that, were the case to be referred to a hearing<sup>10</sup> and the tribunal or officers conducting that hearing<sup>11</sup> were to find that the conduct failed to meet the appropriate standard, the sanction<sup>12</sup> of dismissal from the force would in

- the opinion of the appropriate officer or appropriate authority be likely to be imposed<sup>13</sup>; and
- 94 (3) the report, complaint or allegation is supported by written<sup>14</sup> statements, documents or other material which is, in the opinion of the appropriate officer or appropriate authority, sufficient without further evidence to establish on the balance of probabilities that the conduct of the officer concerned did not meet the appropriate standard<sup>15</sup>; and
- 95 (4) the appropriate officer or appropriate authority is of the opinion that it is in the public interest for the officer concerned to cease to be a member of a police force<sup>16</sup>, or to be a special constable<sup>17</sup>, without delay<sup>18</sup>.

The Police (Conduct) Regulations 2004<sup>19</sup> apply to such special cases with certain modifications<sup>20</sup>.

- 1 For the meaning of 'police officer' see PARA 246 note 2 ante.
- 2 For the meaning of 'appropriate standard' see PARA 249 note 2 ante.
- 3 For the meaning of 'appropriate authority' see PARA 249 note 1 ante.
- 4 For the meaning of 'appropriate officer' see PARA 255 note 23 ante.
- 5 Ie under the Police (Conduct) Regulations 2004, SI 2004/645, reg 11(6)(b)(i): see PARA 255 ante.
- 6 Ibid reg 45(1).
- 7 For the meaning of 'the officer concerned' see PARA 249 note 3 ante.
- 8 'Imprisonable offence' means an offence which is punishable with imprisonment in the case of a person aged 21 or over: Police (Conduct) Regulations 2004, SI 2004/645, reg 45(1), Sch 2 Pt 1 para 1(2).
- 9 Ibid Sch 2 Pt 1 para 1(1)(a).
- 10 Ie under ibid reg 11: see PARA 255 ante.
- 11 As to the persons conducting the hearing see PARA 262 ante.
- 12 Ie specified in the Police (Conduct) Regulations 2004, SI 2004/645, reg 35(2)(a) or reg 35(4)(a): see PARA 273 ante.
- 13 Ibid Sch 2 Pt 1 para 1(1)(b).
- 14 For the meaning of 'written' see PARA 115 note 9 ante.
- 15 Police (Conduct) Regulations 2004, SI 2004/645, Sch 2 Pt 1 para 1(1)(c). As to the balance of probabilities see CIVIL PROCEDURE vol 11 (2009) PARA 775.
- 16 For the meaning of 'police force' see PARA 102 note 11 ante.
- 17 As to special constables see PARAS 108-112 ante.
- 18 Police (Conduct) Regulations 2004, SI 2004/645, Sch 2 Pt 1 para 1(1)(d).
- 19 Ie the Police (Conduct) Regulations 2004, SI 2004/645.
- 20 In the application of the Police (Conduct) Regulations 2004, SI 2004/645, to a case to which reg 45 applies, regs 12-43 (see PARAS 256-278 ante) have, subject to reg 45(3), effect subject to the modifications specified in Sch 2 Pt 2: reg 45(2). Where the case is one to which reg 45 applies but has been returned to the supervising officer or appropriate authority in pursuance of any provision of the regulations as modified by Sch 2 Pt 2, the provisions referred to in reg 45(2) thereafter have effect in relation to the case without modification: reg 45(3). For the meaning of 'supervising officer' see PARA 252 ante.

## 245-279 Conduct of Police Officers

Police (Conduct) Regulations 2004, SI 2004/645, replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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## **B. EFFICIENCY**

### **(A) APPLICATION OF EFFICIENCY REGULATIONS**

#### **280. Application.**

The Police (Efficiency) Regulations 1999<sup>1</sup> establish procedures where the performance or attendance of a member of a police force<sup>2</sup> is considered to be unsatisfactory and provide for the imposition of sanctions in appropriate cases<sup>3</sup>. The regulations do not apply in relation to a chief constable<sup>4</sup> or other officer above the rank<sup>5</sup> of chief superintendent<sup>6</sup>, or to an officer of the rank of constable<sup>7</sup> who has not completed his period of probation<sup>8</sup>.

The Secretary of State may issue guidance to police authorities<sup>9</sup>, chief officers of police<sup>10</sup> and other members of police forces concerning the discharge of their functions under the regulations<sup>11</sup>.

1 The Police (Efficiency) Regulations 1999, SI 1999/732 (as amended): see PARA 281 et seq post.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 The regulations were made by the Secretary of State in exercise of his powers under the Police Act 1996 s 50 (as amended) (see PARA 228 ante) and s 84 (as amended) (see PARA 247 ante). As to the Secretary of State see PARA 107 note 15 ante.

4 As to chief constables see PARAS 179 ante, 188 et seq ante.

5 As to ranks see PARA 230 ante.

6 Police (Efficiency) Regulations 1999, SI 1999/732, reg 2(a) (amended by SI 2001/3888).

7 As to the office of constable see PARA 101 et seq ante.

8 Police (Efficiency) Regulations 1999, SI 1999/732, reg 2(b). As to probation see PARAS 234-235 ante.

9 For the meaning of 'police authority' see PARA 139 note 1 ante.

10 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

11 See the Police Act 1996 s 87 (as amended); and PARA 248 ante.

## **UPDATE**

### **280-299 Efficiency**

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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## (B) FIRST INTERVIEW

### **281. Circumstances in which a first interview may be required.**

Where the reporting officer<sup>1</sup> for a member of a police force is himself a member of that police force and is of the opinion that the performance or the attendance or both of that member is or are unsatisfactory, he may require the member concerned to attend an interview to discuss the performance or attendance (or both) of the member concerned<sup>2</sup>.

Where the reporting officer for a member of a police force is a person employed by a police authority<sup>3</sup> and is of the opinion that the attendance of that member is unsatisfactory, he may require the member concerned to attend an interview to discuss the attendance of the member concerned<sup>4</sup>.

Where the reporting officer for a member of a police force is a person employed by a police authority<sup>5</sup>, any other member of the force who has supervisory responsibility for that first member may, if he is of the opinion that the performance of that member is unsatisfactory, require him to attend an interview to discuss his performance<sup>6</sup>.

An interview under these provisions is known as a 'first interview'<sup>7</sup>.

1 'Reporting officer' means the member of the police force concerned or the person employed under the Police Act 1996 s 15 (as amended) (see PARA 168 ante) who, in either case, has the immediate supervisory responsibility for the member concerned: Police (Efficiency) Regulations 1999, SI 1999/732, reg 3(1) (definition substituted by SI 2003/528; and amended by SI 2003/2600; SI 2006/594). 'Police force concerned' means the police force of which the member concerned is a member; and 'member concerned' means the member of a police force in respect of whom proceedings under the Police (Efficiency) Regulations 1999, SI 1999/732, are, or are proposed to be, taken: reg 3(1). For the meaning of 'police force' see PARA 102 note 11 ante.

2 Ibid reg 4(1) (reg 4 substituted by SI 2003/528).

3 Ie under the Police Act 1996 s 15 (as amended): see PARA 168 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.

4 Police (Efficiency) Regulations 1999, SI 1999/732, reg 4(2) (as substituted (see note 2 supra); and amended by SI 2003/2600; SI 2006/594).

5 Ie under the Police Act 1996 s 15 (as amended): see PARA 168 ante.

6 Police (Efficiency) Regulations 1999, SI 1999/732, reg 4(3) (as substituted (see note 2 supra); and amended by SI 2003/2600; SI 2006/594). In such a case references in the Police (Efficiency) Regulations 1999, SI 1999/732 (as amended) to a reporting officer must be taken to include references to the member with that supervisory responsibility: reg 4(3) (as so substituted).

7 See ibid regs 3(1), 4(1)-(3) (reg 4 as substituted and amended); and the text and notes 1-6 supra.

## **UPDATE**

### **280-299 Efficiency**

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory

performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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## **282. Arrangement of first interview.**

If the reporting officer<sup>1</sup> decides to require a member of a police force<sup>2</sup> to attend a first interview<sup>3</sup>, he must send a notice in writing<sup>4</sup> to the member concerned<sup>5</sup>: (1) requiring him to attend, at a specified time and place, an interview with the reporting officer or, if the member concerned so requests, the countersigning officer<sup>6</sup>; (2) stating the reasons why his performance or attendance is considered unsatisfactory<sup>7</sup>; and (3) informing him that he may seek advice from a representative of his staff association and be accompanied at the interview by a member of a police force selected by him<sup>8</sup>. The reporting officer must send a copy of the notice to the countersigning officer<sup>9</sup>.

A member of a police force who receives such a notice may, not later than seven days (or such longer period as the reporting officer may permit when sending the notice) after the date on which the notice was received by him, request by notice in writing that the interview be conducted by the countersigning officer, and if the member concerned so requests the interview must be conducted by the countersigning officer<sup>10</sup>.

1 For the meaning of 'reporting officer' see PARA 281 note 1 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 For the meaning of 'first interview' see PARA 281 ante.

4 For the meaning of 'writing' see PARA 115 note 9 ante.

5 For the meaning of 'member concerned' see PARA 281 note 1 ante.

6 Police (Efficiency) Regulations 1999, SI 1999/732, reg 5(1)(a)(i). 'Countersigning officer' means: (1) a member of the police force concerned having supervisory responsibility and who (in a case where the reporting officer is a member of the force) is senior in rank to the reporting officer; or (2) a person employed under the Police Act 1996 s 15 (as amended) (see PARA 168 ante) who has supervisory responsibility for the reporting officer: Police (Efficiency) Regulations 1999, SI 1999/732, reg 3(1) (definition substituted by SI 2003/528; and amended by SI 2003/2600; SI 2006/594). For the meaning of 'police force concerned' see PARA 281 note 1 ante. As to ranks see PARA 230 ante.

7 Police (Efficiency) Regulations 1999, SI 1999/732, reg 5(1)(a)(ii) (amended by SI 2003/528).

8 Police (Efficiency) Regulations 1999, SI 1999/732, reg 5(1)(a)(iii). As to police representative institutions see PARAS 423-426 post.

9 Ibid reg 5(1)(b).

10 Ibid reg 5(2).

## **UPDATE**

### **280-299 Efficiency**

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory

performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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### **283. Procedure at first interview.**

The following procedure is to be followed at the first interview<sup>1</sup>. The interviewing officer<sup>2</sup> must explain to the member concerned<sup>3</sup> the reasons why the reporting officer<sup>4</sup> is of the opinion that the performance or attendance of that member is unsatisfactory<sup>5</sup>, and provide the member concerned, or the member of a police force<sup>6</sup> who has accompanied him to the interview, or both of them, with an opportunity to make representations in response<sup>7</sup>. If, after considering any representations so made, the interviewing officer is satisfied that the performance or attendance of the member concerned has been unsatisfactory, he must: (1) inform the member concerned in what respect his performance or attendance is considered unsatisfactory<sup>8</sup>; (2) warn the member concerned of any specific action which he is required to take to achieve an improvement in his performance or attendance<sup>9</sup>; and (3) warn the member concerned that, if a sufficient improvement is not made within such reasonable period as the interviewing officer specifies, he may be required to attend<sup>10</sup> a second interview<sup>11</sup>.

The interviewing officer may, if he considers it appropriate, recommend that the member concerned seek assistance in relation to any matter affecting his health or welfare<sup>12</sup>. The interviewing officer may adjourn the interview to a specified later time or date if it appears to him necessary or expedient to do so<sup>13</sup>.

1 See the Police (Efficiency) Regulations 1999, SI 1999/732, reg 6(1). For the meaning of 'first interview' see PARA 281 ante.

2 'Interviewing officer' means the officer who conducts a first interview: *ibid* reg 3(1).

3 For the meaning of 'member concerned' see PARA 281 note 1 ante.

4 For the meaning of 'reporting officer' see PARA 281 note 1 ante.

5 Police (Efficiency) Regulations 1999, SI 1999/732, reg 6(2)(a) (amended by SI 2003/528).

6 For the meaning of 'police force' see PARA 102 note 11 ante.

7 Police (Efficiency) Regulations 1999, SI 1999/732, reg 6(2)(b). As to the right to be accompanied to an interview see PARA 282 ante.

8 *Ibid* reg 6(3)(a) (reg 6(3)(a), (b) amended by SI 2003/528).

9 Police (Efficiency) Regulations 1999, SI 1999/732, reg 6(3)(b) (as amended: see note 8 *supra*).

10 *Ie* in accordance with *ibid* reg 9 (as amended): see PARA 286 post.

11 *Ibid* reg 6(3)(c). For the meaning of 'second interview' see PARA 285 post.

12 *Ibid* reg 6(4).

13 *Ibid* reg 6(5).

### **UPDATE**



## 280-299 Efficiency

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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### 284. Procedure following first interview.

The interviewing officer<sup>1</sup> must, not later than seven days after the date of the conclusion of the first interview<sup>2</sup> cause to be prepared a written<sup>3</sup> record of the substance of the matters discussed at the interview<sup>4</sup>; and send one copy or, where the member concerned<sup>5</sup> was accompanied at the interview by a member of a police force<sup>6</sup> selected by him, two copies of that record to the member concerned together with a notice in writing informing him that he may submit written comments, or indicate that he has no comment to make, not later than seven days after the date on which the copy is received by him<sup>7</sup>.

In a case where a member has been required to attend a first interview to discuss his attendance and he has failed to attend the interview, the interviewing officer must, if he is satisfied that the attendance of the member has been unsatisfactory, not later than seven days after the date on which the first interview was due to take place cause to be prepared a written notice informing and warning the member of the specified matters<sup>8</sup> concerning his performance or attendance<sup>9</sup>; and send one copy or, where a member of a police force selected by the member concerned attended the interview, two copies of that notice to the member concerned together with a notice in writing informing him that he may submit written comments, or indicate that he has no comments to make, not later than seven days after the date on which the copy is received by him<sup>10</sup>.

The member concerned is entitled to submit written comments in relation to the record of the interview to the interviewing officer not later than seven days after the date on which the copy is received by him<sup>11</sup>. The interviewing officer must send a copy of the record of the interview, and of any written comments of the member concerned to: (1) the senior manager<sup>12</sup>; (2) the personnel officer<sup>13</sup>; and (3) if the interview was conducted by the reporting officer<sup>14</sup>, the countersigning officer<sup>15</sup>, or if the interview was conducted by the countersigning officer, the reporting officer<sup>16</sup>. If the interviewing officer receives any written comments, he must ensure that they are retained with the record of the interview<sup>17</sup>.

Where a member has been required to attend a first interview in relation to his performance, attendance, or both of those categories of behaviour, any second interview may relate only to the category or categories of behaviour that was or were the subject of the first interview<sup>18</sup>.

1 For the meaning of 'interviewing officer' see PARA 283 note 2 ante.

2 For the meaning of 'first interview' see PARA 281 ante.

3 For the meanings of 'written' and 'writing' see PARA 115 note 9 ante.

4 Police (Efficiency) Regulations 1999, SI 1999/732, reg 7(1)(a).

5 For the meaning of 'member concerned' see PARA 281 note 1 ante.

- 6 For the meaning of 'police force' see PARA 102 note 11 ante.
- 7 Police (Efficiency) Regulations 1999, SI 1999/732, reg 7(1)(b).
- 8 le of the matters mentioned in ibid reg 6(3)(a)-(c) (as amended): see PARA 283 ante.
- 9 Ibid reg 7(1A)(i) (reg 7(1A), (6) added by SI 2003/528).
- 10 Police (Efficiency) Regulations 1999, SI 1999/732, reg 7(1A)(ii) (as added: see note 9 supra).
- 11 Ibid reg 7(2). The interviewing officer may, on the application of the member concerned, extend the seven day period if he is satisfied that it is appropriate to do so: reg 7(3).
- 12 Ibid reg 7(4)(a). 'Senior manager' means: (1) the officer who is for the time being the supervisory officer of the person who is, in relation to the member concerned, the countersigning officer; or (2) where the member concerned is of the rank of superintendent or chief superintendent, his supervising officer: reg 3(1) (definition amended by SI 2001/3888). For the meaning of 'countersigning officer' see PARA 282 note 6 ante. As to ranks see PARA 230 ante.
- 13 Police (Efficiency) Regulations 1999, SI 1999/732, reg 7(4)(b). 'Personnel officer' means a person employed under the Police Act 1996 s 15 (as amended) (see PARA 168 ante) or a member of a police force who, in either case, has responsibility for personnel matters relating to members of the police force concerned: Police (Efficiency) Regulations 1999, SI 1999/732, reg 3(1) (definition amended by SI 2003/2600; SI 2006/594). For the meaning of 'police force concerned' see PARA 281 note 1 ante.
- 14 For the meaning of 'reporting officer' see PARA 281 note 1 ante.
- 15 Police (Efficiency) Regulations 1999, SI 1999/732, reg 7(4)(c)(i).
- 16 Ibid reg 7(4)(c)(ii).
- 17 Ibid reg 7(5).
- 18 Ibid reg 7(6) (as added: see note 9 supra).

## UPDATE

### 280-299 Efficiency

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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## (C) SECOND INTERVIEW

### 285. Circumstances in which a second interview may be required.

Where the reporting officer<sup>1</sup> is of the opinion that a member of a police force<sup>2</sup> who was warned<sup>3</sup> that he was required to improve his performance or attendance has, at the end of the period specified by the interviewing officer<sup>4</sup>, failed to make a sufficient improvement in his performance or, as the case may be, in his attendance, he may refer the case to the countersigning officer<sup>5</sup>.

Where a case is so referred and the countersigning officer is a member of the police force concerned<sup>6</sup>, he may, after consulting with the personnel officer<sup>7</sup>, require the member concerned<sup>8</sup> to attend a further interview to discuss the performance or the attendance (or both) of the member concerned<sup>9</sup>. Where a case is so referred and the countersigning officer is a person employed by a police authority<sup>10</sup>, he may, after consulting with the personnel officer, require the member concerned to attend a further interview to discuss the attendance of the member concerned<sup>11</sup>.

A further interview under these provisions is known as a 'second interview'<sup>12</sup>.

- 1 For the meaning of 'reporting officer' see PARA 281 note 1 ante.
- 2 For the meaning of 'police force' see PARA 102 note 11 ante.
- 3 Ie under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 6(3)(b) (as amended): see PARA 283 ante.
- 4 Ie under ibid reg 6(3)(c): see PARA 283 ante. For the meaning of 'interviewing officer' see PARA 283 note 2 ante.
- 5 Ibid reg 8(1) (amended by SI 2003/528). For the meaning of 'countersigning officer' see PARA 282 note 6 ante.
- 6 For the meaning of 'police force concerned' see PARA 281 note 1 ante.
- 7 For the meaning of 'personnel officer' see PARA 284 note 13 ante.
- 8 For the meaning of 'member concerned' see PARA 281 note 1 ante.
- 9 Police (Efficiency) Regulations 1999, SI 1999/732, reg 8(2) (reg 8(2) substituted, and reg 8(3) added, by SI 2003/528).
- 10 Ie under the Police Act 1996 s 15 (as amended): see PARA 168 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.
- 11 Police (Efficiency) Regulations 1999, SI 1999/732, reg 8(3) (as added: see note 9 supra).
- 12 See ibid regs 3(1), 8(2), (3) (as substituted and added); and the text and notes 1-11 supra.

## UPDATE

### 280-299 Efficiency

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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### 286. Arrangement of second interview.

If the countersigning officer<sup>1</sup> decides to require a member of a police force<sup>2</sup> to attend a second interview<sup>3</sup>, he must send a notice in writing<sup>4</sup> to the member concerned<sup>5</sup>: (1) requiring him to attend, at a specified time and place, an interview with the countersigning officer and the

personnel officer<sup>6</sup>; (2) stating the reasons why his performance or attendance is considered unsatisfactory and that further action will be considered in the light of the interview<sup>7</sup>; and (3) informing him that he may seek advice from a representative of his staff association and be accompanied at the interview by a member of a police force selected by him<sup>8</sup>. The countersigning officer must also send a copy of the notice to the reporting officer<sup>9</sup>, the senior manager<sup>10</sup> and the personnel officer<sup>12</sup>.

1 For the meaning of 'countersigning officer' see PARA 282 note 6 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 For the meaning of 'second interview' see PARA 285 ante.

4 For the meaning of 'writing' see PARA 115 note 9 ante.

5 For the meaning of 'member concerned' see PARA 281 note 1 ante.

6 Police (Efficiency) Regulations 1999, SI 1999/732, reg 9(a)(i). For the meaning of 'personnel officer' see PARA 284 note 13 ante.

7 Ibid reg 9(a)(ii) (amended by SI 2003/528).

8 Police (Efficiency) Regulations 1999, SI 1999/732, reg 9(a)(iii). As to police representative institutions see PARAS 423-426 post.

9 For the meaning of 'reporting officer' see PARA 281 note 1 ante.

10 For the meaning of 'senior manager' see PARA 284 note 12 ante.

12 Police (Efficiency) Regulations 1999, SI 1999/732, reg 9(b).

## UPDATE

### 280-299 Efficiency

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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### 287. Procedure at second interview.

The following procedure is to be followed at the second interview<sup>1</sup>. The interview must be conducted by the countersigning officer<sup>2</sup> and the personnel officer<sup>3</sup>. The countersigning officer must: (1) explain to the member concerned<sup>4</sup> the reasons why the reporting officer<sup>5</sup> is of the opinion that the member concerned has failed to make a sufficient improvement in his performance or attendance<sup>6</sup>; and (2) provide the member concerned, or the member of a police force<sup>7</sup> who has accompanied him to the interview, or both of them, with an opportunity to make representations in response<sup>8</sup>.

If, after considering any representations so made, the countersigning officer is satisfied that the performance or attendance of the member concerned has been unsatisfactory during the period specified by the interviewing officer<sup>9</sup> he must<sup>10</sup>:

- 96 (a) inform the member concerned in what respect his performance or attendance is considered unsatisfactory<sup>11</sup>;
- 97 (b) warn the member concerned that he is required to improve his performance or attendance in any such respect<sup>12</sup>;
- 98 (c) inform the member concerned of any specific action which he is required to take to achieve such an improvement<sup>13</sup>; and
- 99 (d) warn the member concerned that, if a sufficient improvement is not made within such reasonable period as the countersigning officer specifies, he may be required to attend an inefficiency hearing<sup>14</sup> at which the officers conducting the hearing will have the power, if appropriate, to require the member concerned to resign from the force or to order reduction in rank<sup>15</sup>.

The countersigning officer may adjourn the interview to a specified later time or date if it appears to him necessary or expedient to do so<sup>16</sup>.

1 See the Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(1). For the meaning of 'second interview' see PARA 285 ante.

2 For the meaning of 'countersigning officer' see PARA 282 note 6 ante.

3 Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(2). For the meaning of 'personnel officer' see PARA 284 note 13 ante.

4 For the meaning of 'member concerned' see PARA 281 note 1 ante.

5 For the meaning of 'reporting officer' see PARA 281 note 1 ante.

6 Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(3)(a) (amended by SI 2003/528; SI 2003/2600).

7 For the meaning of 'police force' see PARA 102 note 11 ante.

8 Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(3)(b). As to the right to be accompanied to an interview see PARA 286 ante.

9 See under ibid reg 6(3)(c): see PARA 283 ante. For the meaning of 'interviewing officer' see PARA 283 note 2 ante.

10 Ibid reg 10(4) (amended by SI 2003/528).

11 Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(4)(a) (amended by SI 2003/528).

12 Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(4)(b) (amended by SI 2003/528).

13 Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(4)(c).

14 For the meaning of 'inefficiency hearing' see PARA 289 post.

15 Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(4)(d). As to ranks see PARA 230 ante.

16 Ibid reg 10(5).

## **UPDATE**

### **280-299 Efficiency**

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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## **288. Procedure following second interview.**

The countersigning officer<sup>1</sup> must, not later than seven days after the conclusion of the second interview<sup>2</sup>:

- 100 (1) in consultation with the personnel officer<sup>3</sup>, prepare a written<sup>4</sup> record of the substance of the matters discussed during the interview<sup>5</sup>; and
- 101 (2) send one copy or, where the member concerned<sup>6</sup> was accompanied at the interview by a member of a police force<sup>7</sup> selected by him, two copies of that record to the member concerned together with a notice in writing, if a warning was given<sup>8</sup> confirming the terms of that warning<sup>9</sup>, and informing him that he may submit written comments, or indicate that he has no such comments, not later than seven days after the date on which the copy is received by him<sup>10</sup>.

In a case where a member has been required to attend a second interview to discuss his attendance and he has failed to attend the interview, the countersigning officer must, if he is satisfied that the attendance of the member has been unsatisfactory during the period specified by the interviewing officer<sup>11</sup>, not later than seven days after the date on which the second interview was due to take place cause to be prepared a written notice informing and warning the member of the specified matters<sup>12</sup> concerning his performance or attendance<sup>13</sup>; and send one copy or, where a member of a police force selected by the member concerned attended the interview, two copies of that notice to the member concerned together with a notice in writing informing him that he may submit written comments, or indicate that he has no comments to make, not later than seven days after the date on which the copy is received by him<sup>14</sup>.

The member concerned is entitled to submit written comments in relation to the record of the interview to the countersigning officer not later than seven days after the date on which it was received by him<sup>15</sup>. The countersigning officer must send a copy of the record of the interview, and of any written comments by the member concerned, to the reporting officer<sup>16</sup>, the personnel officer and the senior manager<sup>17</sup>. If the countersigning officer receives any written comments, he must ensure that they are retained with the record of the interview<sup>18</sup>.

Where a member has been required to attend a second interview in relation to his performance, attendance or both of those categories of behaviour, any inefficiency hearing<sup>19</sup> may relate only to the category or categories of behaviour that was or were the subject of the second interview<sup>20</sup>.

1 For the meaning of 'countersigning officer' see PARA 282 note 6 ante.

2 For the meaning of 'second interview' see PARA 285 ante. As to procedure at the second interview see PARA 287 ante.

3 For the meaning of 'personnel officer' see PARA 284 note 13 ante.

- 4 For the meanings of 'written' and 'writing' see PARA 115 note 9 ante.
- 5 Police (Efficiency) Regulations 1999, SI 1999/732, reg 11(1)(a).
- 6 For the meaning of 'member concerned' see PARA 281 note 1 ante.
- 7 For the meaning of 'police force' see PARA 102 note 11 ante.
- 8 Ie under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(4) (as amended): see PARA 287 ante.
- 9 Ibid reg 11(1)(b)(i).
- 10 Ibid reg 11(1)(b)(ii).
- 11 Ie under ibid reg 6(3)(c): see PARA 283 ante. For the meaning of 'interviewing officer' see PARA 283 note 2 ante.
- 12 Ie the matters mentioned in ibid reg 10(4)(a)-(d) (as amended): see PARA 287 ante.
- 13 Ibid reg 11(1A)(i) (reg 11(1A), (6) added by SI 2003/528).
- 14 Police (Efficiency) Regulations 1999, SI 1999/732, reg 11(1A)(ii) (as added: see note 13 supra).
- 15 Ibid reg 11(2). The countersigning officer may, on the application of the member concerned, extend the seven day period if he is satisfied that it is appropriate to do so: reg 11(3).
- 16 For the meaning of 'reporting officer' see PARA 281 note 1 ante.
- 17 Police (Efficiency) Regulations 1999, SI 1999/732, reg 11(5). For the meaning of 'senior manager' see PARA 284 note 12 ante.
- 18 Ibid reg 11(4).
- 19 For the meaning of 'inefficiency hearing' see PARA 289 post.
- 20 Police (Efficiency) Regulations 1999, SI 1999/732, reg 11(6) (as added: see note 13 supra).

## UPDATE

### 280-299 Efficiency

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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#### **289. Assessment of performance following second interview.**

Not later than 14 days after the date on which the period for improvement specified by the countersigning officer<sup>1</sup> ends, the countersigning officer must, in consultation with the reporting officer<sup>2</sup>, assess the performance or attendance of the member concerned<sup>3</sup> during that period<sup>4</sup>; and the countersigning officer must inform the member concerned in writing<sup>5</sup> whether the

reporting officer and the countersigning officer are of the opinion that there has been a sufficient improvement in performance or attendance during that period<sup>6</sup>.

If the countersigning officer is of the opinion that there has been an insufficient improvement, the member concerned must also, within the period of 14 days, be informed in writing that he may be required to attend, at a time<sup>7</sup> to be notified separately, a hearing to consider his performance or attendance<sup>8</sup>. Such a hearing is known as an 'inefficiency hearing'<sup>9</sup>. The countersigning officer must refer any case in which the member concerned has been so informed to the senior manager<sup>10</sup>, who, if he thinks it appropriate to do so, must direct that an inefficiency hearing be arranged<sup>11</sup>.

1 The period specified under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(4)(d): see PARA 287 ante. For the meaning of 'countersigning officer' see PARA 282 note 6 ante.

2 For the meaning of 'reporting officer' see PARA 281 note 1 ante.

3 For the meaning of 'member concerned' see PARA 281 note 1 ante.

4 Police (Efficiency) Regulations 1999, SI 1999/732, reg 12(1)(a) (reg 12(1)(a), (b), (2) amended by SI 2003/528).

5 For the meaning of 'writing' see PARA 115 note 9 ante.

6 Police (Efficiency) Regulations 1999, SI 1999/732, reg 12(1)(b) (as amended: see note 4 supra).

7 This time must be not sooner than 21 days, but not later than 56 days, after the date on which the notification under ibid reg 12(2) (as amended) is received by the member concerned: reg 12(2) (as amended: see note 4 supra).

8 Ibid reg 12(2) (as amended: see note 4 supra).

9 See ibid regs 3(1), 12(2).

10 For the meaning of 'senior manager' see PARA 284 note 12 ante.

11 Police (Efficiency) Regulations 1999, SI 1999/732, reg 12(3). As to the arrangement of an inefficiency hearing see reg 13 (as amended); and PARA 290 post.

## UPDATE

### 280-299 Efficiency

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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## (D) INEFFICIENCY HEARING

### 290. Arrangement of an inefficiency hearing.



The personnel officer<sup>1</sup> must, not less than 21 days before the date fixed for the hearing, send a notice in writing<sup>2</sup> to the member concerned<sup>3</sup>:

- 102 (1) requiring him to attend an inefficiency hearing<sup>4</sup> at a specified time and place<sup>5</sup>;
- 103 (2) stating the reasons why his performance or attendance is considered unsatisfactory<sup>6</sup>;
- 104 (3) informing him that he may be represented at the hearing either by counsel or a solicitor<sup>7</sup>, or by a member of a police force<sup>8</sup> selected by him<sup>9</sup>; and
- 105 (4) warning him of the powers<sup>10</sup> which are available to the officers conducting the inefficiency hearing in the event that they find that the performance or attendance of the member concerned has been unsatisfactory<sup>11</sup>.

If the member concerned wishes to call any witnesses other than the person representing him at the inefficiency hearing<sup>12</sup>, he must, not later than seven days before the hearing, give notice in writing to the personnel officer of the names and addresses of those witnesses<sup>13</sup>.

1 For the meaning of 'personnel officer' see PARA 284 note 13 ante.

2 For the meaning of 'writing' see PARA 115 note 9 ante.

3 For the meaning of 'member concerned' see PARA 281 note 1 ante.

4 For the meaning of 'inefficiency hearing' see PARA 289 ante.

5 Police (Efficiency) Regulations 1999, SI 1999/732, reg 13(1)(a).

6 Ibid reg 13(1)(b) (reg 13(1)(b), (d) amended by SI 2003/528).

7 Police (Efficiency) Regulations 1999, SI 1999/732, reg 13(1)(c)(i).

8 For the meaning of 'police force' see PARA 102 note 11 ante.

9 Police (Efficiency) Regulations 1999, SI 1999/732, reg 13(1)(c)(ii).

10 Ie under ibid reg 17 (as amended): see PARA 294 post.

11 Ibid reg 13(1)(d) (as amended: see note 6 supra).

12 The reference to the hearing includes a reference to any hearing under ibid reg 15 (as amended) (postponement or adjournment of hearing: see PARA 292 post); and in relation to such a hearing the period within which notice is to be given under reg 13(2) is such period as the chairman of the hearing may direct when he postpones or, as the case may be, adjourns the hearing: reg 13(3).

13 Ibid reg 13(2).

## UPDATE

### 280-299 Efficiency

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

## **291. Procedure at an inefficiency hearing.**

The inefficiency hearing<sup>1</sup> must be conducted by three officers appointed by the chief officer of police<sup>2</sup>, one of whom is the chairman of the hearing and must be:

- 106 (1) where the member concerned<sup>3</sup> is a member of a police force in England and Wales<sup>4</sup>, a member of such a police force holding the rank of assistant chief constable<sup>5</sup>;
- 107 (2) where the member concerned is a member of the metropolitan police force<sup>6</sup>, a member of that police force holding the rank of commander<sup>7</sup>; and
- 108 (3) where the member concerned is a member of the City of London police force<sup>8</sup>, an assistant City of London police commissioner or a member of that police force holding the rank of commander<sup>9</sup>.

The chairman must be assisted by two assessors who must be:

- 109 (a) in a case falling within head (1) or head (3) above: (i) where the member concerned is of the rank of superintendent or chief superintendent, members of a police force other than the police force concerned<sup>10</sup> who hold the rank of assistant chief constable or commander in the metropolitan police force<sup>11</sup>; and (ii) where the member concerned is below the rank of superintendent, members of a police force who hold the rank of superintendent<sup>12</sup>; and
- 110 (b) in a case falling within head (2) above: (i) where the member concerned is of the rank of superintendent or chief superintendent, members of the metropolitan police force who hold the rank of commander<sup>13</sup>; and (ii) where the member concerned is below the rank of superintendent, members of the metropolitan police force who hold the rank of superintendent<sup>14</sup>.

The chairman and any assessor assisting him must be a person who has neither attended nor otherwise been involved with the first interview<sup>15</sup> or the second interview<sup>16</sup> held in relation to the member concerned<sup>17</sup>.

As soon as the chief officer of police has appointed the chairman, the personnel officer<sup>18</sup> must arrange for a copy of any document which was available to the interviewing officer<sup>19</sup> in relation to the first interview<sup>20</sup>, which was available to the countersigning officer<sup>21</sup> in relation to the second interview<sup>22</sup>, or which was prepared or submitted<sup>23</sup> following the second interview<sup>24</sup>, to be made available to the chairman, and a copy of any such document must be sent to the member concerned<sup>25</sup>.

The procedure at the inefficiency hearing is such as the chairman may determine<sup>26</sup>. The inefficiency hearing must be held in private unless the chairman, with the consent of the member concerned, decides otherwise<sup>27</sup>. The chairman must afford the member concerned an opportunity to make representations in relation to the matters referred to in the notice sent to him<sup>28</sup> and to call any witness in respect of whom notice has been given<sup>29</sup> by him<sup>30</sup>. A verbatim record of the proceedings at the inefficiency hearing must be taken and, if the member concerned so requests within the time limit for any appeal and after he has lodged notice of appeal<sup>31</sup>, a transcript of the record or a copy of it must be supplied to him by the chairman<sup>32</sup>.

If the member concerned does not attend the inefficiency hearing or at any adjournment of it, the hearing may be proceeded with and concluded in his absence if it appears to the chairman just and proper to do so<sup>33</sup>. Where, owing to the absence of the member concerned, it is not possible to comply with the whole or any part of the procedure relating to an inefficiency hearing<sup>34</sup>, the case may be proceeded with as if that procedure had been complied with<sup>35</sup>.

- 1 For the meaning of 'inefficiency hearing' see PARA 289 ante.
- 2 For the meaning of 'chief officer of police' see PARA 105 note 7 ante. As to the application of the rule of absolute immunity from suit in relation to proceedings before such a tribunal see *Heath v Metropolitan Police Comr* [2004] EWCA Civ 943, [2005] ICR 329, [2005] IRLR 270; *Lake v British Transport Police* [2006] All ER (D) 04 (Oct), EAT. As to such immunity see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 197 et seq.
- 3 For the meaning of 'member concerned' see PARA 281 note 1 ante.
- 4 Ie a member of a police force maintained under the Police Act 1996 s 2: see PARA 136 ante.
- 5 Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(1)(a). As to assistant chief constables see PARA 181 ante. As to ranks in police forces generally see PARA 230 ante.
- 6 As to the metropolitan police force see PARA 137 ante.
- 7 Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(1)(b).
- 8 As to the City of London police force see PARA 138 ante.
- 9 Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(1)(c).
- 10 For the meaning of 'police force concerned' see PARA 281 note 1 ante.
- 11 Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(3)(a)(i) (reg 14(3)(a)(i), (b)(i) amended by SI 2001/3888). As to commanders in the metropolitan police force see PARA 186 ante.
- 12 Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(3)(a)(ii).
- 13 Ibid reg 14(3)(b)(i) (as amended: see note 11 supra).
- 14 Ibid reg 14(3)(b)(ii).
- 15 For the meaning of 'first interview' see PARA 281 ante.
- 16 For the meaning of 'second interview' see PARA 285 ante.
- 17 Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(2).
- 18 For the meaning of 'personnel officer' see PARA 284 note 13 ante.
- 19 For the meaning of 'interviewing officer' see PARA 283 note 2 ante.
- 20 Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(4)(a).
- 21 For the meaning of 'countersigning officer' see PARA 282 note 6 ante.
- 22 Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(4)(b).
- 23 Ie prepared or submitted under ibid reg 11 (as amended) (see PARA 288 ante), reg 12 (as amended) (see PARA 289 ante) or reg 13 (as amended) (see PARA 290 ante).
- 24 Ibid reg 14(4)(c).
- 25 Ibid reg 14(4).
- 26 Ibid reg 14(5). This provision is expressed to be subject to the provisions of reg 14 (as amended).
- 27 Ibid reg 14(6).
- 28 Ie under ibid reg 13(1) (as amended): see PARA 290 ante.
- 29 Ie under ibid reg 13(2): see PARA 290 ante.
- 30 Ibid reg 14(7).

31 le in accordance with rules made under the Police Act 1996 s 85: see PARA 300 post.

32 Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(8).

33 Ibid reg 14(9). This provision is expressed to be subject to reg 15(1): see PARA 292 post. As to postponement or adjournment of an inefficiency hearing see PARA 292 post.

34 le the procedure described in ibid reg 14 (as amended) (see the text to notes 1-33 supra) or reg 15 (as amended) (see PARA 292 post).

35 Ibid reg 14(10).

## **UPDATE**

### **280-299 Efficiency**

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

### **291 Procedure at an inefficiency hearing**

TEXT AND NOTE 1--*Lake*, cited, reversed, [2007] EWCA Civ 424, [2007] All ER (D) 77 (May) (see PARA 262).

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### **292. Postponement or adjournment of an inefficiency hearing.**

If, in the case of an inefficiency hearing<sup>1</sup> other than one in respect of which the member concerned<sup>2</sup> has been sent a notice stating the reasons why his attendance is considered unsatisfactory, the member concerned intimates to the chairman<sup>3</sup> that he will be unable to attend the inefficiency hearing, or in the absence of such intimation does not attend the hearing, and the chairman is satisfied that a good reason for such non-attendance is given by, or on behalf of, the member concerned, he must postpone, or as the case may be adjourn, the hearing<sup>4</sup>.

The chairman may also adjourn the inefficiency hearing if, having given the member concerned the opportunity of making representations<sup>5</sup>, he considers it appropriate to allow a further period for assessment of the performance or attendance of the member concerned<sup>6</sup>. Where the chairman so adjourns the inefficiency hearing<sup>7</sup>, he must specify a period (not exceeding three months) during which the reporting officer<sup>8</sup> and the countersigning officer<sup>9</sup> must assess the performance or attendance of the member concerned<sup>10</sup>, fix a date on which the hearing is to resume<sup>11</sup>, and require the member concerned to attend on that date at a specified place<sup>12</sup>. Not later than 14 days after the date on which the period for further assessment specified by the chairman<sup>13</sup> ends, the reporting officer and the countersigning officer must prepare a report containing their assessment of the performance or attendance of the member concerned during that period<sup>14</sup>, and the countersigning officer must send the report to the chairman of the inefficiency hearing and a copy of the report to the member concerned<sup>15</sup>. At the continuation of the inefficiency hearing the chairman must afford the member concerned an opportunity to

make representations in relation to the matters referred to in the report and to call any witnesses in respect of whom notice<sup>16</sup> was given by him<sup>17</sup>. Where at the time the report is sent the chairman of the inefficiency hearing is absent, incapacitated or suspended from duty and it is likely that his absence, incapacity or suspension will continue for a period of more than 28 days, the chief officer of police<sup>18</sup> must arrange for another member of a police force<sup>19</sup>, being a person who would have been eligible for appointment as chairman of the inefficiency hearing<sup>20</sup> in relation to the hearing in question, to carry out in relation to the member concerned the functions of the chairman<sup>21</sup> of the inefficiency hearing<sup>22</sup>.

The chairman of an inefficiency hearing may adjourn the hearing to a specified later time or date if it appears to him necessary or expedient to do so<sup>23</sup>.

1 For the meaning of 'inefficiency hearing' see PARA 289 ante. As to the procedure at inefficiency hearings see PARA 291 ante.

2 For the meaning of 'member concerned' see PARA 281 note 1 ante.

3 As to the chairman see PARA 291 ante.

4 Police (Efficiency) Regulations 1999, SI 1999/732, reg 15(1) (reg 15(1), (2), (3)(a), (4)(a) amended by SI 2003/528).

5 *Ie* under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(7): see PARA 291 ante.

6 *Ibid* reg 15(2) (as amended: see note 4 *supra*).

7 *Ie* under reg 15(2) (as amended): see the text to notes 5-6 *supra*.

8 For the meaning of 'reporting officer' see PARA 281 note 1 ante.

9 For the meaning of 'countersigning officer' see PARA 282 note 6 ante.

10 Police (Efficiency) Regulations 1999, SI 1999/732, reg 15(3)(a) (as amended: see note 4 *supra*).

11 *Ibid* reg 15(3)(b).

12 *Ibid* reg 15(3)(c).

13 *Ie* the period specified under *ibid* reg 15(3)(a) (as amended): see the text to notes 7-10 *supra*.

14 *Ibid* reg 15(4)(a) (as amended: see note 4 *supra*).

15 *Ibid* reg 15(4)(b).

16 *Ie* notice under reg 13(2): see PARA 290 ante.

17 *Ibid* reg 15(5).

18 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

19 For the meaning of 'police force' see PARA 102 note 11 ante.

20 *Ie* under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 14(1), (2) (reg 14(1) as amended): see PARA 291 ante.

21 *Ie* the functions specified in *ibid* reg 15(5) (see the text to notes 16-17 *supra*), reg 16 (as amended) (see PARA 293 post) and reg 17 (as amended) (see PARA 294 post).

22 *Ibid* reg 15(6).

23 *Ibid* reg 15(7).

## UPDATE

## 280-299 Efficiency

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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### 293. Finding.

At the conclusion of the inefficiency hearing<sup>1</sup>, the officers conducting the hearing must reach a decision whether the performance or attendance of the member concerned<sup>2</sup> in the specified period<sup>3</sup> has been satisfactory or not<sup>4</sup>. The chairman may, at the conclusion of the hearing, defer reaching a decision until a later time or date if it appears necessary or expedient to do so<sup>5</sup>.

The decision of the officers conducting the hearing must state the finding and, where they have found that the performance or attendance of the member concerned has not been satisfactory, their reasons as well as any sanction which they impose<sup>6</sup>. The chairman must record the decision in writing<sup>7</sup>, and must, not later than three days after the finding is so stated, send a copy of it to the member concerned<sup>8</sup>, the senior manager<sup>9</sup>, and the personnel officer<sup>10</sup>; and the copy sent to the member concerned must be accompanied by a notice in writing informing him of his right to request<sup>11</sup> a review<sup>12</sup>.

Any decision of the officers conducting the hearing<sup>13</sup> is based on a simple majority, but must not indicate whether it was taken unanimously or by a majority<sup>14</sup>.

1 For the meaning of 'inefficiency hearing' see PARA 289 ante. As to the procedure at an inefficiency hearing see PARAS 291-292 ante.

2 For the meaning of 'member concerned' see PARA 281 note 1 ante.

3 I.e. in the period referred to in the Police (Efficiency) Regulations 1999, SI 1999/732, reg 10(4)(d) (see PARA 287 ante) (reg 16(1)(a)) or, where the hearing was adjourned under reg 15(2) (as amended) (see PARA 292 ante), over the whole of the period comprising the period referred to in reg 10(4)(d) and the further period specified by the chairman under reg 15(3)(a) (as amended) (see PARA 292 ante) (reg 16(1)(b)). As to the chairman see PARA 291 ante.

4 Ibid reg 16(1) (reg 16(1), (3) amended by SI 2003/528).

5 Police (Efficiency) Regulations 1999, SI 1999/732, reg 16(2).

6 Ibid reg 16(3) (as amended: see note 4 supra). As to sanctions see reg 17 (as amended); and PARA 294 post.

7 For the meaning of 'writing' see PARA 115 note 9 ante.

8 Police (Efficiency) Regulations 1999, SI 1999/732, reg 16(4)(a).

9 Ibid reg 16(4)(b). For the meaning of 'senior manager' see PARA 284 note 12 ante.

10 Ibid reg 16(4)(c). For the meaning of 'personnel officer' see PARA 284 note 13 ante.

11 I.e. under ibid reg 19 (as amended): see PARA 297 post.

12 Ibid reg 16(4).

13 Ie under ibid reg 16 (as amended) or reg 17 (as amended) (see PARA 294 post).

14 Ibid reg 16(5).

## **UPDATE**

### **280-299 Efficiency**

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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#### **294. Sanctions.**

A member of a police force<sup>1</sup> of the rank<sup>2</sup> of chief superintendent or below may not be dismissed, required to resign or reduced in rank by a decision taken in proceedings<sup>3</sup> unless he has been given an opportunity to elect to be legally represented at any hearing held in the course of those proceedings<sup>4</sup>.

If the officers conducting the inefficiency hearing<sup>5</sup> make a finding that the performance of the member concerned<sup>6</sup> during the relevant period has been unsatisfactory, they may:

- 111 (1) require the member concerned to resign from the force either one month<sup>7</sup> after the date on which a copy of the inefficiency hearing's decision<sup>8</sup> is received by him or on such later date as may be specified<sup>9</sup>;
- 112 (2) order reduction in his rank with immediate effect and issue a written<sup>10</sup> warning to the member concerned that unless a sufficient improvement in his performance is made within such period as the chairman<sup>11</sup> specifies, he may, following consideration of his performance during that period<sup>12</sup>, be required to attend a first interview<sup>13</sup> in respect of that performance<sup>14</sup>; or
- 113 (3) issue such a written warning as is mentioned in head (2) above<sup>15</sup>.

Where the sanction under head (1) above is imposed and where the member concerned has not resigned from the force in accordance with the requirement, then the effect of the decision is to dismiss the member concerned from the force as from the time referred to in head (1) above<sup>16</sup>.

If the officers conducting the inefficiency hearing make a finding that the attendance of the member concerned during the relevant period has been unsatisfactory, they may:

- 114 (a) impose the sanction mentioned in head (1) above<sup>17</sup>;
- 115 (b) in a case where it is established that insufficient support has been given to the member concerned during the relevant period in order to assist him to return to work, specify such measures as must be taken in order to give him sufficient support in order to assist him to return to work<sup>18</sup>;

- 116 (c) issue a written warning to the member concerned that unless a sufficient improvement in his attendance is made within such period as is specified, he may, following consideration of his attendance during that period<sup>19</sup>, be required to attend a second inefficiency hearing at which he may be required to resign from the force<sup>20</sup>;
- 117 (d) in a case where it is established that the member's duties within the force contribute directly to his unsatisfactory attendance record, order the member to be redeployed to alternative duties (which may involve a reduction of rank) within the force with immediate effect<sup>21</sup>.

Where the steps under head (b) or head (d) above are taken, the member concerned must be issued with a written warning that unless a sufficient improvement in his attendance is made within such period as is specified, he may, following consideration of his attendance during that period<sup>22</sup>, be required to attend a first interview, a second interview<sup>23</sup> or an inefficiency hearing, as specified by the officers conducting the inefficiency hearing<sup>24</sup>.

1 For the meaning of 'police force' see PARA 102 note 11 ante.

2 As to ranks see PARA 230 ante.

3 The proceedings under regulations made in accordance with the Police Act 1996 s 50(3)(a): see PARA 228 ante.

4 Ibid s 84(1). As to such representation see the Police (Efficiency) Regulations 1999, SI 1999/732, reg 13(1) (c); and PARA 290 ante.

5 For the meaning of 'inefficiency hearing' see PARA 289 ante. As to the officers conducting the hearing see PARA 291 ante. As to the procedure at an inefficiency hearing see PARAS 291-292 ante; and as to the finding at such a hearing see PARA 293 ante.

6 For the meaning of 'member concerned' see PARA 281 note 1 ante.

7 For the meaning of 'month' see PARA 140 note 17 ante.

8 He sent under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 16(4): see PARA 293 ante.

9 Ibid reg 17(1)(a).

10 For the meaning of 'written' see PARA 115 note 9 ante.

11 As to the chairman of the hearing see PARA 291 ante.

12 He in accordance with the Police (Efficiency) Regulations 1999, SI 1999/732, reg 18: see PARA 295 post.

13 For the meaning of 'first interview' see PARA 281 ante.

14 Police (Efficiency) Regulations 1999, SI 1999/732, reg 17(1)(b).

15 Ibid reg 17(1)(c).

16 Ibid reg 17(2).

17 Ibid reg 17(3)(a) (reg 17(3), (4) added by SI 2003/528).

18 Police (Efficiency) Regulations 1999, SI 1999/732, reg 17(3)(b) (as added: see note 17 supra).

19 He in accordance with ibid reg 18A (as added): see PARA 296 post.

20 Ibid reg 17(3)(c) (as added: see note 17 supra).

21 Ibid reg 17(3)(d) (as added: see note 17 supra).

22 He in accordance with ibid reg 18A (as added): see PARA 296 post.



23 For the meaning of 'second interview' see PARA 285 ante.

24 Police (Efficiency) Regulations 1999, SI 1999/732, reg 17(4) (as added: see note 17 supra).

## **UPDATE**

### **280-299 Efficiency**

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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### **295. Assessment of performance following inefficiency hearing.**

Where the member concerned<sup>1</sup> has been given<sup>2</sup> a written warning<sup>3</sup>, the reporting officer<sup>4</sup> must, not later than 14 days after the end of the period specified in the warning, assess the performance of the member concerned during that period<sup>5</sup>, cause to be prepared a report on the performance<sup>6</sup>, and send a copy of the report to the member concerned<sup>7</sup>.

Where the report concludes that the performance of the member concerned has been satisfactory during the period specified in the warning, no further action is to be taken in respect of that performance during that period<sup>8</sup>. Where the report concludes that, in the opinion of the reporting officer, the performance of the member concerned has been unsatisfactory during that period, the reporting officer must request the member concerned to attend a first interview<sup>9</sup>, and the efficiency regulations<sup>10</sup> have effect for the purposes of the performance of the member concerned during that period as if he had been invited to a first interview<sup>11</sup>.

1 For the meaning of 'member concerned' see PARA 281 note 1 ante.

2 Ie under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 17(1)(b), or (c): see PARA 294 ante.

3 Ibid reg 18(1).

4 For the meaning of 'reporting officer' see PARA 281 note 1 ante.

5 Police (Efficiency) Regulations 1999, SI 1999/732, reg 18(2)(a).

6 Ibid reg 18(2)(b).

7 Ibid reg 18(2)(c).

8 Ibid reg 18(3).

9 Ie in accordance with ibid reg 4 (as substituted): see PARA 281 ante.

10 Ie the Police (Efficiency) Regulations 1999, SI 1999/732 (as amended).

11 Ibid reg 18(4).

## UPDATE

### 280-299 Efficiency

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/B. EFFICIENCY/ (D) Inefficiency Hearing/296. Assessment of attendance following inefficiency hearing.

#### 296. Assessment of attendance following inefficiency hearing.

Where the member concerned<sup>1</sup> has been given<sup>2</sup> a written warning<sup>3</sup>, the countersigning officer<sup>4</sup> must, not later than 14 days after the end of the period specified in the warning, assess the attendance of the member concerned during that period<sup>5</sup>, cause to be prepared a report on the attendance<sup>6</sup>, and send a copy of the report to the member concerned<sup>7</sup>.

Where the report concludes that the attendance of the member concerned has been satisfactory during the period specified in the warning, no further action may be taken in respect of that attendance during that period<sup>8</sup>. Where the report concludes that, in the opinion of the countersigning officer, the attendance of the member concerned has been unsatisfactory or has made insufficient improvement during that period, then the countersigning officer:

- 118 (1) in a case where the member concerned has been given a written warning<sup>9</sup> that unless there is a sufficient improvement in his attendance he may be required to attend a second inefficiency hearing<sup>10</sup> at which he may be required to resign from the force, may require the member to attend<sup>11</sup> an inefficiency hearing<sup>12</sup>;
- 119 (2) in a case where the member concerned has been given a written warning<sup>13</sup> that unless there is a sufficient improvement in his attendance he may be required to attend a first interview<sup>14</sup>, a second interview<sup>15</sup> or an inefficiency hearing, as specified by the officers conducting the inefficiency hearing, may require the member to attend a first interview, second interview or an inefficiency hearing as so specified<sup>16</sup>.

1 For the meaning of 'member concerned' see PARA 281 note 1 ante.

2 I.e. under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 17(3)(c) (as added) or reg 17(4) (as added): see PARA 294 ante.

3 Ibid reg 18A(1) (reg 18A added by SI 2003/528).

4 For the meaning of 'countersigning officer' see PARA 282 note 6 ante.

5 Police (Efficiency) Regulations 1999, SI 1999/732, reg 18A(2)(a) (as added: see note 3 supra).

6 Ibid reg 18A(2)(b) (as added: see note 3 supra).

7 Ibid reg 18A(2)(c) (as added: see note 3 supra).

8 Ibid reg 18A(3) (as added: see note 3 supra).

9 le under ibid reg 17(3)(c) (as added): see PARA 294 ante.

10 For the meaning of 'inefficiency hearing' see PARA 289 ante.

11 le under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 12 (as amended): see PARA 289 ante.

12 Ibid reg 18A(4)(a) (as added: see note 3 supra). The Police (Efficiency) Regulations 1999, SI 1999/732 (as amended) have effect for the purposes of the attendance of the member concerned during that period as if he had been required to attend an inefficiency hearing under reg 12 (as amended) (see PARA 289 ante): reg 18A(4) (a) (as so added).

13 le under ibid reg 17(4) (as added): see PARA 294 ante.

14 For the meaning of 'first interview' see PARA 281 ante.

15 For the meaning of 'second interview' see PARA 285 ante.

16 Police (Efficiency) Regulations 1999, SI 1999/732, reg 18A(4)(b) (as added: see note 3 supra). The Police (Efficiency) Regulations 1999, SI 1999/732 (as amended) have effect for the purposes of the attendance of the member concerned during that period as if he had been required to attend that interview or hearing under reg 4 (as substituted) (see PARA 281 ante), reg 8 (as amended) (see PARA 285 ante) or reg 12 (as amended) (see PARA 289 ante) as the case may be: reg 18A(4)(b) (as so added).

## **UPDATE**

### **280-299 Efficiency**

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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## **(E) REVIEW**

### **297. Request for a review.**

Where the officers conducting the inefficiency hearing<sup>1</sup> have imposed a sanction<sup>2</sup>, the member concerned<sup>3</sup> is entitled to request the chief officer of the police force concerned<sup>4</sup>, or, where the member concerned is a member of the metropolitan police force, an assistant metropolitan police commissioner<sup>5</sup>, to review the finding or the sanction imposed, or both<sup>6</sup>. The officer to whom such a request is made is known as 'the reviewing officer'<sup>7</sup>.

A request for a review must be made to the reviewing officer in writing<sup>8</sup> within 14 days of the date on which a copy of the decision of the inefficiency hearing<sup>9</sup> is received by the member concerned unless this period is extended by the reviewing officer<sup>10</sup>. The request for a review must state the grounds on which the review is requested and whether a meeting is requested<sup>11</sup>.

The reviewing officer must hold a meeting with the member concerned if requested to do so<sup>12</sup>. Where a meeting is held, the member concerned may be accompanied by a member of a police force and by counsel or a solicitor<sup>13</sup>.

- 1 For the meaning of 'inefficiency hearing' see PARA 289 ante. As to the conduct of inefficiency hearings see PARAS 291-294 ante.
- 2 le under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 17 (as amended): see PARA 294 ante.
- 3 For the meaning of 'member concerned' see PARA 281 note 1 ante.
- 4 For the meaning of 'police force concerned' see PARA 281 note 1 ante. 'Chief officer' is not defined in the Police (Efficiency) Regulations 1999, SI 1999/732 (as amended). For the meaning of 'chief officer of police' in the Police Act 1996 see PARA 105 note 7 ante.
- 5 As to the metropolitan police force see PARA 137 ante. As to assistant metropolitan police commissioners see PARA 186 ante.
- 6 Police (Efficiency) Regulations 1999, SI 1999/732, reg 19(1) (amended by SI 2000/1549).
- 7 Police (Efficiency) Regulations 1999, SI 1999/732, reg 19(1) (as amended: see note 6 supra).
- 8 For the meaning of 'writing' see PARA 115 note 9 ante.
- 9 le sent under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 16(4): see PARA 293 ante.
- 10 Ibid reg 19(2).
- 11 Ibid reg 19(3).
- 12 Ibid reg 20(1).
- 13 Ibid reg 20(2).

## **UPDATE**

### **280-299 Efficiency**

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/B. EFFICIENCY/ (E) Review/298. Finding of the review.

### **298. Finding of the review.**

The member concerned<sup>1</sup> must be informed of the finding of the reviewing officer<sup>2</sup> in writing<sup>3</sup> within three days of completion of the review<sup>4</sup>. The reviewing officer may confirm the decision of the hearing or he may impose a different sanction but he may not impose a sanction greater than that imposed at the hearing<sup>5</sup>. The decision of the reviewing officer takes effect by way of substitution for the decision of the hearing and as from the date of that hearing<sup>6</sup>. Where as a result of the decision of the reviewing officer the member concerned is required to resign or is reduced in rank he must be notified in writing of his right of appeal to a police appeals tribunal<sup>7</sup>.

- 1 For the meaning of 'member concerned' see PARA 281 note 1 ante.
- 2 For the meaning of 'the reviewing officer' see PARA 297 ante.
- 3 For the meaning of 'writing' see PARA 115 note 9 ante.

- 4 Police (Efficiency) Regulations 1999, SI 1999/732, reg 21(1). As to reviews see PARA 297 ante.
- 5 Ibid reg 21(2). As to hearings see PARAS 291-293 ante. As to sanctions see PARA 294 ante.
- 6 Ibid reg 21(3).
- 7 Ibid reg 21(4). As to police appeals tribunals see PARA 300 et seq post.

## UPDATE

### 280-299 Efficiency

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/B. EFFICIENCY/ (E) Review/299. Hearing of review in absence of chief officer.

### 299. Hearing of review in absence of chief officer.

Where the chief officer<sup>1</sup> is an interested party or the circumstances<sup>2</sup> in which a chief constable's powers may be exercised by a deputy chief constable or an assistant chief constable apply, the review<sup>3</sup> must be conducted by the deputy chief constable or the designated<sup>4</sup> assistant chief constable<sup>5</sup>. However, where the deputy chief constable or the designated assistant chief constable is absent or an interested party, the review must be conducted by the chief officer of another force who has agreed to act in that capacity<sup>6</sup>.

Where the member concerned<sup>7</sup> is a member of the metropolitan police force<sup>8</sup> the review must be conducted by an assistant metropolitan police commissioner who is not an interested party<sup>9</sup>. Where the member concerned is a member of the City of London police force<sup>10</sup>, the review must be conducted by the City of London Police Commissioner<sup>11</sup> or, if he is absent or an interested party, by a chief officer of another force who has agreed to act in that capacity or an assistant metropolitan police commissioner who has agreed to act in that capacity<sup>12</sup>.

1 'Chief officer' is not defined in the Police (Efficiency) Regulations 1999, SI 1999/732 (as amended). For the meaning of 'chief officer of police' in the Police Act 1996 see PARA 105 note 7 ante.

2 In the circumstances in *ibid* s 12A(1) or (2) (as added): see PARA 178 ante.

3 As to reviews see PARAS 297-298 ante.

4 In under the Police Act 1996 s 12A(2) (as added): see PARA 178 ante.

5 Police (Efficiency) Regulations 1999, SI 1999/732, reg 22(1) (reg 22(1), (2) substituted by SI 2006/594). This provision is expressed to be subject to the Police (Efficiency) Regulations 1999, SI 1999/732, reg 22(2)-(4) (reg 22(2)-(3) as substituted): see the text to notes 6-12 *infra*. As to deputy chief constables see PARA 180 ante; and as to assistant chief constables see PARA 181 ante.

6 *Ibid* reg 22(2) (as substituted: see note 5 *supra*).

7 For the meaning of 'member concerned' see PARA 281 note 1 ante.

8 As to the metropolitan police force see PARA 137 ante.

9 Police (Efficiency) Regulations 1999, SI 1999/732, reg 22(3) (substituted by SI 2000/1549). As to assistant metropolitan police commissioners see PARA 186 ante.

10 As to the City of London police force see PARA 138 ante.

11 As to the City of London Police Commissioner see PARA 187 ante.

12 Police (Efficiency) Regulations 1999, SI 1999/732, reg 22(4).

## **UPDATE**

### **280-299 Efficiency**

SI 1999/732 has been replaced by the Police (Performance) Regulations 2008, SI 2008/2862, which establish procedures for proceedings in respect of unsatisfactory performance or attendance of members of police forces of the rank of chief superintendent or below, excluding probationers, and special constables.

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## **C. APPEALS**

### **(A) POLICE APPEALS TRIBUNALS**

#### **300. Appeals generally.**

A member of a police force<sup>1</sup> who is dismissed, required to resign or reduced in rank<sup>2</sup> by a decision taken in proceedings<sup>3</sup> may appeal to a police appeals tribunal<sup>4</sup> against the decision except where he has a right of appeal to some other person<sup>5</sup>; and in that case he may appeal to a police appeals tribunal from any decision of that other person as a result of which he is dismissed, required to resign or reduced in rank<sup>6</sup>.

Where a police appeals tribunal allows an appeal it may, if it considers that it is appropriate to do so, make an order dealing with the appellant in a way which appears to the tribunal to be less severe than the way in which he was dealt with by the decision appealed against<sup>7</sup>, and in which he could have been dealt with by the person who made that decision<sup>8</sup>.

The Secretary of State<sup>9</sup> may make rules<sup>10</sup> as to the procedure on appeals to police appeals tribunals<sup>11</sup>.

1 For the meaning of 'police force' see PARA 102 note 11 ante.

2 As to ranks see PARA 230 ante.

3 I.e. a decision taken in proceedings under regulations made in accordance with the Police Act 1996 s 50(3) (as amended): see PARA 228 ante. As to such regulations see the Police (Conduct) Regulations 2004, SI 2004/645 (see PARA 245 et seq ante); and the Police (Efficiency) Regulations 1999, SI 1999/732 (see PARA 280 et seq ante).

4 As to police appeals tribunals see PARA 301 post.

5 For the meaning of 'person' see PARA 110 note 6 ante.

6 Police Act 1996 s 85(1).

7 Ibid s 85(2)(a).

8 Ibid s 85(2)(b).

9 As to the Secretary of State see PARA 107 note 15 ante.

10 Such rules may make provision for enabling a police appeals tribunal to require any person to attend a hearing to give evidence or to produce documents and may, in particular, apply the Local Government Act 1972 s 250(2), (3) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105) with such modifications as may be set out in the rules: Police Act 1996 s 85(4). See further PARAS 310, 312 post. Any power of the Secretary of State to make rules is exercisable by statutory instrument: s 102. A statutory instrument containing rules made under s 85 must be laid before Parliament after being made: s 85(5).

11 Ibid s 85(3). As to such rules see the Police Appeals Tribunals Rules 1999, SI 1999/818; and PARA 305 et seq post. Guidance issued by the Secretary of State under the Police Act 1996 s 87(1) (see PARA 248 ante) does not extend to the police appeals tribunals: see *R (on the application of the Chief Constable of Avon and Somerset Police) v Police Appeals Tribunal* [2004] EWHC 220 (Admin), (2004) Times, 11 February, [2004] All ER (D) 17 (Feb).

## UPDATE

### 300 Appeals generally

TEXT AND NOTES--Police Act 1996 s 85 amended: Criminal Justice and Immigration Act 2008 Sch 22 para 8. For transitional and saving provisions see Criminal Justice and Immigration Act 2008 Sch 27 para 35(1), (2)(a), (3); and SI 2008/2993. See also Police Appeals Tribunals Rules 2008, SI 2008/2863, rr 4, 5.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 3--SI 1999/732 replaced: Police (Performance) Regulations 2008, SI 2008/2862. SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

NOTE 11--SI 1999/818 replaced: SI 2008/2863.

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### 301. Police appeals tribunals.

In the case of an appeal by a senior officer<sup>1</sup>, the police appeals tribunal consists of three members appointed by the Secretary of State<sup>2</sup>, of whom:

120 (1) one must be a person chosen from a list of persons who have a seven year general qualification<sup>3</sup> for judicial and certain other appointments and have been nominated by the Lord Chancellor for these purposes<sup>4</sup>;

121 (2) one must be a member of a police authority<sup>5</sup>, other than the relevant police authority<sup>6</sup>; and

122 (3) one must be a person who is (or has within the previous five years been) an inspector of constabulary<sup>7</sup>, or has within the previous five years been (and is no longer) the Metropolitan Police Commissioner<sup>8</sup>.

The member of the police appeals tribunal appointed under head (1) above is the chairman<sup>9</sup>.

In the case of an appeal by a member of a police force who is not a senior officer, the police appeals tribunal consists of four members appointed by the relevant police authority, of whom:

- 123 (a) one must be a person chosen from the list referred to in head (1) above<sup>10</sup>;
- 124 (b) one must be a member of the authority<sup>11</sup>;
- 125 (c) one must be a person chosen from a list maintained by the Secretary of State of persons who are, or have within the last five years been, chief officers of police<sup>12</sup>, other than a person who is, or has at any time been, the chief officer of police of the force maintained by the relevant police authority<sup>13</sup>; and
- 126 (d) one must be a retired officer of appropriate rank<sup>14</sup>.

The member of the police appeals tribunal to whom head (a) above applies is the chairman<sup>15</sup>.

Where there is an equality of voting among the members of a police appeals tribunal, the chairman has a second or casting vote<sup>16</sup>.

Members of a police appeals tribunal are paid such remuneration<sup>17</sup>, and reimbursed for such expenses<sup>18</sup>, as the Secretary of State may determine<sup>19</sup>.

A police appeals tribunal constituted under these provisions<sup>20</sup> is subject to the direct supervision of the Council on Tribunals<sup>21</sup>.

1 'Senior officer' means a member of a police force holding a rank above that of chief superintendent: Police Act 1996 s 85(6), Sch 6 para 10(a) (amended by the Criminal Justice and Police Act 2001 s 125(5)(a)). For the meaning of 'police force' see PARA 102 note 11 ante. As to ranks see PARA 230 ante.

2 As to the Secretary of State see PARA 107 note 15 ante.

3 Within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 763.

4 Police Act 1996 Sch 6 para 1(1)(a). The nomination of a person for these purposes by the Lord Chancellor is subject to the procedure in the Constitutional Reform Act 2005 ss 86-93 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS): see s 85(1), Sch 14 Pt 3. The function of the Lord Chancellor under the Police Act 1996 Sch 6 para 1(1)(a) is a protected function and may not be transferred, modified, abolished or subject to direction as to its exercise: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 For the meaning of 'police authority' see PARA 139 note 1 ante. As to membership of police authorities see PARA 140 et seq.

6 Police Act 1996 Sch 6 para 1(1)(b). 'Relevant police authority' means the police authority which maintains the police force of which the appellant is a member: Sch 6 para 10(b).

7 Ibid Sch 6 para 1(1)(c)(i). As to Her Majesty's Inspectors of Constabulary see PARA 206 ante.

8 Ibid Sch 6 para 1(1)(c)(ii). As to the Metropolitan Police Commissioner see PARA 183 ante.

9 Ibid Sch 6 para 1(2).

10 Ibid Sch 6 para 2(1)(a).

11 Ibid Sch 6 para 2(1)(b) (amended by the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 107, Sch 34 Pt VII).

12 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

13 Police Act 1996 Sch 6 para 2(1)(c).

14 Ibid Sch 6 para 2(1)(d). 'Retired officer of appropriate rank' means: (1) where the appellant was, immediately before the proceedings, of the rank of chief superintendent or superintendent, a retired member of



a police force who at the time of his retirement was one of those ranks; and (2) in any other case, a retired member of a police force who at the time of his retirement was of the rank of chief inspector or below: Sch 6 para 10(c) (amended by the Criminal Justice and Police Act 2001 s 125(5)(b)(ii)).

15 Police Act 1996 Sch 6 para 2(2).

16 Ibid Sch 6 para 5.

17 Ibid Sch 6 para 8(a).

18 Ibid Sch 6 para 8(b).

19 Ibid Sch 6 para 8.

20 Ie under ibid Sch 6 (as amended).

21 See the Tribunals and Inquiries Act 1992 s 1, Sch 1 Pt I para 36A (as added); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 55-57.

## UPDATE

### 301 Police appeals tribunals

TEXT AND NOTE 4--1996 Act Sch 6 para 1(1)(a) amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 27.

TEXT AND NOTES 6-8, 10-14--1996 Act Sch 6 paras 1(1)(b), (c), 2(1), 10(b), (c) substituted: Criminal Justice and Immigration Act 2008 Sch 22 para 11. For savings see SI 2008/2993.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/C. APPEALS/(A) Police Appeals Tribunals/302. Hearing.

### 302. Hearing.

An appeal is instituted by giving notice of appeal within the time prescribed by rules<sup>1</sup>. On any appeal the respondent is such person as may be prescribed by rules<sup>2</sup>.

A police appeals tribunal<sup>3</sup> may determine a case without a hearing but must not decide to do so unless both the appellant and the respondent have been afforded an opportunity to make written<sup>4</sup> or, if either so requests, oral representations, and any such representations have been considered<sup>5</sup>.

Where a hearing is held, the appellant has the right to appear by a serving member of a police force<sup>6</sup> or by counsel or a solicitor, and the respondent has the right to appear by an officer of the police force or by the chief executive or other officer of the police authority<sup>7</sup> or by counsel or a solicitor<sup>8</sup>.

Provision is made for the procedure on an appeal to a police appeals tribunal<sup>9</sup>.

1 Police Act 1996 s 85(6), Sch 6 para 3. The rules referred to in the text are those made under s 85 (see PARA 300 ante): Sch 6 paras 3, 4. As to notice of appeal see PARA 307 post.

2 Ibid Sch 6 para 4. See note 1 supra. As to the respondent see PARA 306 post.

3 As to police appeals tribunals see PARA 301 ante.

4 For the meaning of 'written' see PARA 115 note 9 ante.

5 Police Act 1996 Sch 6 para 6(1). A police appeals tribunal is not limited to merely reviewing the decision appealed against, but has the power to consider all matters put before it and to reach its own conclusion, substituting its own decision for the one below if so persuaded: *R (on the application of the Chief Constable of Avon and Somerset Police) v Police Appeals Tribunal* [2004] EWHC 220 (Admin), (2004) Times, 11 February, [2004] All ER (D) 17 (Feb).

6 For the meaning of 'police force' see PARA 102 note 11 ante.

7 For the meaning of 'police authority' see PARA 139 note 1 ante. As to chief executives of police authorities see PARA 168 ante.

8 Police Act 1996 Sch 6 para 6(2) (amended by the Police and Justice Act 2006 s 2, Sch 2 para 19).

9 See PARA 305 et seq post.

## UPDATE

### 302 Hearing

TEXT AND NOTES 5, 8--Police Act 1996 Sch 6 para 6 repealed: Criminal Justice and Immigration Act 2008 Sch 22 para 11(4), Sch 28 Pt 8. For savings see SI 2008/2993.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/C. APPEALS/(A) Police Appeals Tribunals/303. Effect of orders.

### 303. Effect of orders.

Where an appeal is allowed<sup>1</sup>, the order takes effect by way of substitution for the decision appealed against, and as from the date of that decision or, where that decision was itself a decision on appeal, the date of the original decision appealed against<sup>2</sup>. Where the effect of the order made by the police appeals tribunal<sup>3</sup> is to reinstate the appellant in the force or in his rank<sup>4</sup>, for the purpose of reckoning service for pension and, to such extent (if any) as may be determined by the order, for the purpose of pay, he is deemed to have served in the force or in his rank continuously from the date of the original decision to the date of his reinstatement<sup>5</sup>. Where the effect of the order made by the police appeals tribunal is to reinstate the appellant in the force and he was suspended for a period immediately preceding the date of the original decision or any subsequent decision, the order must deal with the suspension<sup>6</sup>.

1 As to the hearing of appeals see PARA 302 ante. As to procedure on appeals see PARA 305 et seq post.

2 Police Act 1996 s 85(6), Sch 6 para 7(1).

3 As to police appeals tribunals see PARA 301 ante.

4 As to ranks see PARA 230 ante.

5 Police Act 1996 Sch 6 para 7(2). As to police pensions see PARA 407 et seq post.

6 Ibid Sch 6 para 7(3). As to suspension see PARA 249 ante.

## UPDATE

### 303 Effect of orders

TEXT AND NOTE 2--Police Act 1996 Sch 6 para 7(1) substituted: Criminal Justice and Immigration Act 2008 Sch 22 para 11(5). For savings see SI 2008/2993.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/C. APPEALS/(A) Police Appeals Tribunals/304. Costs.

### **304. Costs.**

An appellant must pay the whole of his own costs unless the police appeals tribunal<sup>1</sup> directs that the whole or any part of his costs are to be defrayed out of the police fund<sup>2</sup> of the relevant police authority<sup>3</sup>. Subject to this, all the costs and expenses of an appeal<sup>4</sup>, including the costs of the respondent<sup>5</sup> and any remuneration or expenses paid to members of the tribunal<sup>6</sup>, are to be defrayed out of the police fund of the relevant police authority<sup>7</sup>.

1 As to police appeals tribunals see PARA 301 ante.

2 For the meaning of 'police fund' see PARA 167 note 3 ante.

3 Police Act 1996 s 85(6), Sch 6 para 9(1). For the meaning of 'relevant police authority' see PARA 301 note 6 ante.

4 Ie an appeal under ibid s 85: see PARA 300 ante.

5 As to the respondent see PARA 306 post.

6 Ie by virtue of the Police Act 1996 Sch 6 para 8: see PARA 301 ante.

7 Ibid Sch 6 para 9(2).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/C. APPEALS/(B) Police Appeals Tribunals Rules/305. Appeals tribunals.

## **(B) POLICE APPEALS TRIBUNALS RULES**

### **305. Appeals tribunals.**

The Secretary of State<sup>1</sup> has made provision<sup>2</sup> as to the procedure on appeals to police appeals tribunals<sup>3</sup>. In relation to an appeal against a decision made in accordance with the Police (Discipline) Regulations 1985<sup>4</sup> or the Police (Discipline) (Senior Officers) Regulations 1985<sup>5</sup>, nothing in the Police Appeals Tribunals Rules 1999<sup>6</sup> applies<sup>7</sup> and the previous rules<sup>8</sup> continue to have effect<sup>9</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 Ie under the Police Act 1996 s 85 (appeals against dismissal): see PARA 300 ante.

3 See the Police Appeals Tribunals Rules 1999, SI 1999/818 (as amended); and PARA 306 et seq post. As to police appeals tribunals see PARA 301 ante.

4 Ie the Police (Discipline) Regulations 1985, SI 1985/518 (revoked).

- 5 le the Police (Discipline) (Senior Officers) Regulations 1985, SI 1985/519 (revoked).
- 6 le the Police Appeals Tribunals Rules 1999, SI 1999/818 (as amended).
- 7 Ibid r 2(2)(a).
- 8 le the Police (Appeals) Rules 1985, SI 1985/576 (revoked).
- 9 Police Appeals Tribunals Rules 1999, SI 1999/818, r 2(2)(b).

## **UPDATE**

### **305-314 Police Appeals Tribunals Rules**

Police Appeals Tribunals Rules 1999, SI 1999/818, replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863.

### **305 Appeals tribunals**

TEXT AND NOTES--SI 1999/818 replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863. For transitional provision see r 2(2).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/C. APPEALS/(B) Police Appeals Tribunals Rules/306. The respondent.

### **306. The respondent.**

The respondent on an appeal by a senior officer<sup>1</sup> is a person designated for the purpose by the relevant police authority<sup>2</sup>. The respondent on an appeal by a member of a police force who is not a senior officer is the chief officer of that force<sup>3</sup>.

1 For the meaning of 'senior officer' see PARA 301 note 1 ante.

2 Police Appeals Tribunals Rules 1999, SI 1999/818, r 4(1). For the meaning of 'relevant police authority' see PARA 301 note 6 ante.

3 Ibid r 4(2). 'Chief officer' is not defined in the Police Appeals Tribunals Rules 1999, SI 1999/818 (as amended). For the meaning of 'chief officer of police' in the Police Act 1996 see PARA 105 note 7 ante.

## **UPDATE**

### **305-314 Police Appeals Tribunals Rules**

Police Appeals Tribunals Rules 1999, SI 1999/818, replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/C. APPEALS/(B) Police Appeals Tribunals Rules/307. Notice of appeal.

### 307. Notice of appeal.

The time within which notice of an appeal<sup>1</sup> must be given is 21 days from the date on which the decision appealed against was notified<sup>2</sup> to the appellant<sup>3</sup>. The notice of appeal must be given in writing<sup>4</sup> to the relevant police authority<sup>5</sup> and a copy of the notice must be sent to the respondent<sup>6</sup>.

1    le an appeal under the Police Act 1996 s 85: see PARA 300 ante.

2    le in pursuance of regulations made in accordance with *ibid* s 50(3) (as amended): see PARA 228 ante. As to such regulations see the Police (Conduct) Regulations 2004, SI 2004/645 (see PARA 245 et seq ante); and the Police (Efficiency) Regulations 1999, SI 1999/732 (see PARA 280 et seq ante).

3    Police Appeals Tribunals Rules 1999, SI 1999/818, reg 5(1) (amended by SI 2003/2597; SI 2006/594). This provision is expressed to be subject to the Police Appeals Tribunals Rules 1999, SI 1999/818, regs 5(2), 7 (see PARA 309 post): see r 5(1).

In a special case to which the Police (Conduct) Regulations 2004, SI 2004/645, reg 45 (see PARA 279 ante) applies, where the decision appealed against was given in pursuance of those regulations as modified by Sch 2 Pt 2 (see PARA 279 ante), the time within which notice of an appeal must be given is 28 days from: (1) the conclusion of any criminal proceedings in which the appellant is charged with an offence in respect of the conduct to which the decision appealed against related; or (2) a decision that no such criminal proceedings will be instituted or taken over by the Director of Public Prosecutions has been communicated to the appellant: Police Appeals Tribunals Rules 1999, SI 1999/818, r 5(2); Interpretation Act 1978 ss 17(2), 23(1). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

4    For the meaning of 'writing' see PARA 115 note 9 ante.

5    For the meaning of 'relevant police authority' see PARA 301 note 6 ante.

6    Police Appeals Tribunals Rules 1999, SI 1999/818, r 5(3). As to the respondent see PARA 306 ante.

## UPDATE

### 305-314 Police Appeals Tribunals Rules

Police Appeals Tribunals Rules 1999, SI 1999/818, replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863.

### 307 Notice of appeal

NOTES 2, 3--SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

NOTE 2--SI 1999/732 replaced: Police (Performance) Regulations 2008, SI 2008/2862.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/C. APPEALS/(B) Police Appeals Tribunals Rules/308. Procedure on notice of appeal.

### 308. Procedure on notice of appeal.

As soon as practicable after receipt of a copy of the notice of appeal<sup>1</sup>, the respondent<sup>2</sup> must provide to the relevant police authority<sup>3</sup> a copy of the report of the person who made the decision appealed against<sup>4</sup>, the transcript of the proceedings at the original hearing<sup>5</sup>, and any documents which were made available to the person conducting the original hearing<sup>6</sup>. A copy of

the transcript of the proceedings at the original hearing must at the same time be sent to the appellant<sup>7</sup>.

The appellant must, within 28 days<sup>8</sup> of the date on which he receives a copy of the transcript, submit to the relevant police authority: (1) a statement of the grounds of appeal<sup>9</sup>; (2) any supporting documents<sup>10</sup>; and (3) any written<sup>11</sup> representations which the appellant wishes to make<sup>12</sup> or, as the case may be, any request<sup>13</sup> to make oral representations<sup>14</sup>, or a statement that he does not wish to make any such written or oral representations<sup>15</sup>. The documents so submitted to the police authority must, as soon as practicable, be copied to the members of the tribunal and to the respondent<sup>16</sup>.

The respondent must, not later than 21 days from the date on which he receives the copy documents sent to him submit to the relevant police authority: (a) a statement of his response to the appeal<sup>17</sup>; (b) any supporting documents<sup>18</sup>; and (c) any written representations which the respondent wishes to make<sup>19</sup> or, as the case may be, any request<sup>20</sup> to make oral representations<sup>21</sup>, or a statement that he does not wish to make any such representations<sup>22</sup>.

The respondent must at the same time send a copy of the documents referred to in heads (a) and (c) above to the appellant, together with a list of the documents (if any) referred to in head (b) above<sup>23</sup>. The documents submitted to the police authority under heads (a) to (c) above must, as soon as practicable, be copied to the members of the tribunal<sup>24</sup>.

1 As to the notice of appeal see PARA 307 ante.

2 As to the respondent see PARA 306 ante.

3 For the meaning of 'relevant police authority' see PARA 301 note 6 ante.

4 Police Appeals Tribunals Rules 1999, SI 1999/818, r 6(1)(a).

5 Ibid r 6(1)(b). 'Original hearing' means the conduct hearing or inefficiency hearing at the conclusion of which the appellant was found to have failed to meet the appropriate standard or, as the case may be, the appellant's performance was found to have been unsatisfactory: r 3(1). For the meaning of 'inefficiency hearing' see PARA 289 ante; and for the meaning of 'appropriate standard' see PARA 249 note 2 ante (definitions applied by r 3(2)).

6 Ibid r 6(1)(c).

7 Ibid r 6(2).

8 Ie subject to ibid r 7 (extensions of time limits): see PARA 309 post.

9 Ibid r 6(3)(a).

10 Ibid r 6(3)(b).

11 For the meaning of 'written' see PARA 115 note 9 ante.

12 Ie under the Police Act 1996 s 85, Sch 6 para 6: see PARA 302 ante.

13 See note 12 supra.

14 Police Appeals Tribunals Rules 1999, SI 1999/818, r 6(3)(c)(i). So far as applicable, r 8 (see PARA 310 post) and r 9 (see PARA 311 post) apply in relation to the hearing of any oral representations under the Police Act 1996 Sch 6 para 6 (see PARA 302 ante) as they apply in relation to the hearing of an appeal under s 85 (see PARA 300 ante), and the appellant and the respondent are entitled to be represented at the hearing of such oral representations as if it were the hearing of such an appeal: Police Appeals Tribunals Rules 1999, SI 1999/818, r 6(8).

15 Ibid r 6(3)(c)(ii). However, in a case where the appellant submits such a statement, nothing in this provision prevents representations under the Police Act 1996 Sch 6 para 6 (see PARA 302 ante) being made by him to the chairman of the tribunal: Police Appeals Tribunals Rules 1999, SI 1999/818, r 6(3). 'Tribunal' in relation to a case means the police appeals tribunal appointed to determine that case: r 3(1). As to police appeals tribunals and as to the chairman of such a tribunal see PARA 301 ante.

- 16 Ibid r 6(4).
- 17 Ibid r 6(5)(a).
- 18 Ibid r 6(5)(b).
- 19 Ie under the Police Act 1996 Sch 6 para 6: see PARA 302 ante.
- 20 See note 19 supra.
- 21 Police Appeals Tribunals Rules 1999, SI 1999/818, r 6(5)(c)(i). See also r 6(8); and note 14 supra.
- 22 Ibid r 6(5)(c)(ii). However, in a case where the respondent submits such a statement, nothing in this provision prevents representations under the Police Act 1996 Sch 6 para 6 (see PARA 302 ante) being made by him to the chairman of the tribunal: Police Appeals Tribunals Rules 1999, SI 1999/818, r 6(5).
- 23 Ibid r 6(6).
- 24 Ibid r 6(7).

## **UPDATE**

### **305-314 Police Appeals Tribunals Rules**

Police Appeals Tribunals Rules 1999, SI 1999/818, replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863.

### **308 Procedure on notice of appeal**

TEXT AND NOTES--See Police Appeals Tribunals Rules 2008, SI 2008/2863, r 9. As to review of an appeal, determination of an appeal and the power to request disclosure of documents see rr 11-13.

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### **309. Extensions of time limits.**

The relevant police authority<sup>1</sup> may extend the period for the submission of a notice of appeal<sup>2</sup> or the submission by an appellant of documents relating to an appeal<sup>3</sup> in any case where the authority is satisfied, on the application of the appellant, that by reason of the special circumstances of the case it is just to do so<sup>4</sup>. Where the relevant police authority refuses such an application by the appellant, it must give the appellant notice in writing<sup>5</sup> of the reasons for the decision and of the right of appeal<sup>6</sup>. An appellant whose application is refused may, not later than 14 days after receiving such notice, appeal in writing to the chairman of the tribunal<sup>7</sup> against the decision of the relevant police authority<sup>8</sup>.

1 For the meaning of 'relevant police authority' see PARA 301 note 6 ante.

2 Ie the period referred to in the Police Appeals Tribunals Rules 1999, SI 1999/818, r 5(1), (2): see PARA 307 ante.

3 Ie the period referred to in ibid r 6(3): see PARA 308 ante.

4 Ibid r 7(1). In such a case rr 5, 6 (see PARAS 307-308 ante) have effect as if for that period there were substituted such extended period as the authority may specify: r 7(1).

5 For the meaning of 'writing' see PARA 115 note 9 ante.

6 Police Appeals Tribunals Rules 1999, SI 1999/818, r 7(2).

7 For the meaning of 'tribunal' see PARA 308 note 15 ante. As to the chairman see PARA 301 ante.

8 Police Appeals Tribunals Rules 1999, SI 1999/818, r 7(3). The chairman may, on such an appeal, make any decision which the relevant police authority had power to make under r 7(1) (see the text to notes 1-4 supra), and, where he extends the period, r 5 and r 6 (see PARAS 307-308 ante) have effect as if for that period there were substituted such extended period as the chairman may specify: r 7(4).

## UPDATE

### 305-314 Police Appeals Tribunals Rules

Police Appeals Tribunals Rules 1999, SI 1999/818, replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/C. APPEALS/(B) Police Appeals Tribunals Rules/310. Procedure at hearing.

### 310. Procedure at hearing.

Where a case is to be determined at a hearing<sup>1</sup>, the chairman of the tribunal<sup>2</sup> must cause the appellant and the respondent<sup>3</sup> to be given notice of the date of the hearing not less than 28 days, or such shorter period as may with the agreement of both parties be determined, before the hearing begins<sup>4</sup>.

The tribunal may proceed with the hearing in the absence of either party, whether represented or not, if it appears to be just and proper to do so, and may adjourn it from time to time as may appear necessary for the due hearing of the case<sup>5</sup>. Subject to the appeals tribunals rules<sup>6</sup>, the procedure at a hearing is determined by the tribunal<sup>7</sup>.

1 As to hearings see PARA 302 ante.

2 For the meaning of 'tribunal' see PARA 308 note 15 ante. As to the chairman see PARA 301 ante.

3 As to the respondent see PARA 306 ante.

4 Police Appeals Tribunals Rules 1999, SI 1999/818, r 8(1). The Local Government Act 1972 s 250(2), (3) (as amended) (powers in relation to local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to the hearing as if: (1) references to a local inquiry were references to a hearing held under the Police Act 1996 Sch 6 (as amended); (2) references to the person appointed to hold the inquiry, or to the person holding the inquiry, were references to the chairman of the tribunal; and (3) references to the Local Government Act 1972 s 250 (as amended) were references to the Police Appeals Tribunals Rules 1999, SI 1999/818, r 8: r 8(2).

5 Ibid r 8(3).

6 Ie the Police Appeals Tribunals Rules 1999, SI 1999/818 (as amended).

7 Ibid r 8(4).

## UPDATE



### **305-314 Police Appeals Tribunals Rules**

Police Appeals Tribunals Rules 1999, SI 1999/818, replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863.

#### **310 Procedure at hearing**

TEXT AND NOTES--See now Police Appeals Tribunals Rules 2008, SI 2008/2863, r 14. As to legal and other representation see r 15.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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#### **311. Hearing to be in private.**

The hearing must be held in private<sup>1</sup>. However, it is within the discretion of the tribunal<sup>2</sup> to allow such person or persons as it considers desirable to attend the whole or such part of the hearing as it may think fit<sup>3</sup>. Notwithstanding that the tribunal has allowed a person to attend the hearing, where it appears to the tribunal that a witness may in giving evidence disclose information which, in the public interest, ought not to be disclosed to a member of the public, the tribunal must require any member of the public present to withdraw while that evidence is given<sup>4</sup>. A member of the Council on Tribunals is entitled to attend the hearing<sup>5</sup>.

1 Police Appeals Tribunals Rules 1999, SI 1999/818, r 9(1). This provision is expressed to be subject to r 9(3) (see the text to note 5 infra) and r 12 (see PARA 313 post): see r 9(1). As to hearings see PARA 302 ante; and as to procedure at hearings see PARA 310 ante.

2 For the meaning of 'tribunal' see PARA 308 note 15 ante.

3 Police Appeals Tribunals Rules 1999, SI 1999/818, r 9(1).

4 Ibid r 9(2).

5 Ibid r 9(3). The Police Appeals Tribunal is subject to the supervision of the Council on Tribunals: see PARA 301 ante. As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 55-57.

### **UPDATE**

### **305-314 Police Appeals Tribunals Rules**

Police Appeals Tribunals Rules 1999, SI 1999/818, replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863.

#### **311 Hearing to be in private**

TEXT AND NOTES--See now Police Appeals Tribunals Rules 2008, SI 2008/2863, r 18.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/C. APPEALS/(B) Police Appeals Tribunals Rules/312. Evidence at hearing.

### **312. Evidence at hearing.**

Unless the tribunal<sup>1</sup> otherwise determines, the evidence adduced by the respondent<sup>2</sup> must be given first<sup>3</sup>. All oral evidence given at the hearing must be given on oath<sup>4</sup>. All witnesses giving evidence at the hearing are subject to examination and cross-examination<sup>5</sup>. Any question as to whether any evidence is admissible, or whether any question may or may not be put to a witness, is determined by the tribunal<sup>6</sup>. A verbatim record of the evidence given at the hearing must be taken and kept for a period of not less than seven years from the date of the end of the hearing unless the chairman of the tribunal requests that a transcription of the record be made<sup>7</sup>.

The tribunal may admit evidence by way of a written<sup>8</sup> statement made by a person, notwithstanding that he may not be called as a witness, but that evidence is not admissible under this provision if it would not have been admissible had it been given orally<sup>9</sup>. A written statement purporting to be made and signed by a person and witnessed by another person is presumed to have been made by that person unless the contrary is shown<sup>10</sup>. These provisions<sup>11</sup> do not prejudice the admission of written evidence which would otherwise<sup>12</sup> be admissible<sup>13</sup>.

1 For the meaning of 'tribunal' see PARA 308 note 15 ante.

2 As to the respondent see PARA 306 ante.

3 Police Appeals Tribunals Rules 1999, SI 1999/818, r 10(1). As to procedure at a hearing generally see PARAS 310-311 ante.

4 Ibid r 10(2). 'Oath' includes affirmation and declaration: Interpretation Act 1978 ss 5, 23(1), Sch 1. As to oaths, affirmations and declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1021 et seq.

5 Police Appeals Tribunals Rules 1999, SI 1999/818, r 10(3).

6 Ibid r 10(4).

7 Ibid r 10(5). As to the chairman see PARA 301 ante.

8 For the meaning of 'written' see PARA 115 note 9 ante.

9 Police Appeals Tribunals Rules 1999, SI 1999/818, r 11(1).

10 Ibid r 11(2).

11 Ie ibid r 11.

12 Ie apart from ibid r 11.

13 Ibid r 11(3).

## **UPDATE**

### **305-314 Police Appeals Tribunals Rules**

Police Appeals Tribunals Rules 1999, SI 1999/818, replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863.

### 312 Evidence at hearing

TEXT AND NOTES--See now Police Appeals Tribunals Rules 2008, SI 2008/2863, rr 16, 17.

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### 313. Attendance of complainant at hearing.

Where there is a hearing<sup>1</sup> where the decision appealed against arose from a complaint and the appeal is not against sanction only<sup>2</sup>, the chairman of the tribunal<sup>3</sup> must cause notice of the date of the hearing to be sent to the complainant, at the same time as such notice is sent<sup>4</sup> to the appellant and the respondent<sup>5</sup>. The tribunal must allow the complainant to attend the hearing while witnesses are being examined, or cross-examined, on the facts alleged and, if the tribunal considers it appropriate so to do on account of the age of the complainant, or otherwise, must allow him to be accompanied by a personal friend or relative who is not to be called as a witness at the inquiry<sup>6</sup>. However, where the complainant is to be called as a witness at the hearing he and any person allowed to accompany him must not be allowed to attend before he gives his evidence<sup>7</sup>, and where it appears to the tribunal that a witness may in giving evidence disclose information which, in the public interest, ought not to be disclosed to a member of the public, it must require the complainant and any person allowed to accompany him to withdraw while that evidence is given<sup>8</sup>. Where the appellant gives evidence, then, after the person representing the respondent has had an opportunity of cross-examining him, the chairman of the tribunal must put to him any questions which the complainant requests should be so put and might have been properly so put by way of cross-examination and, at his discretion, may allow the complainant himself to put such questions to the appellant<sup>9</sup>. The complainant and any person allowed to accompany him must neither intervene in nor interrupt the hearing, and if he or such a person behaves in a disorderly or abusive manner, or otherwise misconducts himself, the chairman of the tribunal may exclude him from the remainder of the hearing<sup>10</sup>.

1 As to hearings see PARA 302 ante; and as to procedure at hearings see PARA 310 ante.

2 Police Appeals Tribunals Rules 1999, SI 1999/818, r 12(1).

3 For the meaning of 'tribunal' see PARA 308 note 15 ante. As to the chairman see PARA 301 ante.

4 Ie in pursuance of the Police Appeals Tribunals Rules 1999, SI 1999/818, r 8(1): see PARA 310 ante.

5 Ibid r 12(2). As to the respondent see PARA 306 ante.

6 Ibid r 12(3). This provision is expressed to be notwithstanding anything in r 9(1) (hearing to be held in private: see PARA 311 ante) and subject to r 12(5) (see the text to note 10 infra): r 12(3).

7 Ibid r 12(3)(a).

8 Ibid r 12(3)(b).

9 Ibid r 12(4).

10 Ibid r 12(5).

### UPDATE

### **305-314 Police Appeals Tribunals Rules**

Police Appeals Tribunals Rules 1999, SI 1999/818, replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863.

#### **313 Attendance of complainant at hearing**

TEXT AND NOTES--See now Police Appeals Tribunals Rules 2008, SI 2008/2863, r 19. As to the attendance of the IPCC see r 20; 'IPCC' means the Independent Police Complaints Commission: r 3(1). On the application of the appellant or the respondent or otherwise, the chair may require any observer to withdraw from all or any part of the hearing: r 21.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iii) Police Conduct and Efficiency/C. APPEALS/(B) Police Appeals Tribunals Rules/314. Statement of tribunal's determination.

#### **314. Statement of tribunal's determination.**

The chairman of the tribunal<sup>1</sup> must prepare a written<sup>2</sup> statement of the tribunal's determination of the appeal and of the reasons for the decision<sup>3</sup>. The statement and a record of any order made<sup>4</sup> must be submitted to the relevant police authority<sup>5</sup> and, in the case of an appeal by a senior officer<sup>6</sup>, to the Secretary of State<sup>7</sup> within a reasonable period after the determination of the appeal<sup>8</sup>. The relevant police authority must, as soon as practicable, copy the statement and any record of an order submitted to it to the appellant and the respondent<sup>9</sup>; and in a case where the decision appealed against arose from a complaint, the relevant police authority must also notify the complainant of the outcome of the appeal<sup>10</sup>.

1 For the meaning of 'tribunal' see PARA 308 note 15 ante. As to the chairman see PARA 301 ante.

2 For the meaning of 'written' see PARA 115 note 9 ante.

3 Police Appeals Tribunals Rules 1999, SI 1999/818, r 13(1). As to judicial review of the tribunal's decision see PARA 315 post.

4 Under the Police Act 1996 s 85(2): see PARA 300 ante.

5 For the meaning of 'relevant police authority' see PARA 301 note 6 ante.

6 For the meaning of 'senior officer' see PARA 301 note 1 ante.

7 As to the Secretary of State see PARA 107 note 15 ante.

8 Police Appeals Tribunals Rules 1999, SI 1999/818, r 13(2).

9 Ibid r 13(3). As to the respondent see PARA 306 ante.

10 Ibid r 13(4).

#### **UPDATE**

### **305-314 Police Appeals Tribunals Rules**

Police Appeals Tribunals Rules 1999, SI 1999/818, replaced: Police Appeals Tribunals Rules 2008, SI 2008/2863.

### **314 Statement of tribunal's determination**

TEXT AND NOTES--See now Police Appeals Tribunals Rules 2008, SI 2008/2863, r 22.

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## ***D. JUDICIAL REVIEW***

### **315. Judicial review of disciplinary proceedings.**

The courts have no defined place and no direct or immediate function in relation to police discipline<sup>1</sup>, but the proceedings<sup>2</sup> are of a judicial character and the rules of natural justice<sup>3</sup> should be observed<sup>4</sup>. Prima facie, therefore, the proceedings are subject to judicial review<sup>5</sup>; nevertheless, the courts appear reluctant to intervene in disciplinary matters except where there has been some substantial injustice<sup>6</sup>. Where the original proceedings are not a nullity<sup>7</sup>, it would appear that the right of appeal to a police appeals tribunal<sup>8</sup> enjoyed by a member of a police force is such that, either as a matter of law or as a matter of discretion, the courts would be unlikely to intervene and would regard proceedings on appeal, unless themselves impugned, as curing any defect in the original proceedings<sup>9</sup>.

1 The position of the courts in this regard corresponds to their position in relation to prison discipline: see *R v Board of Visitors of Hull Prison, ex p St Germain* [1979] QB 425 at 454, [1979] 1 All ER 701 at 716, CA, per Shaw LJ.

2 In this context, 'proceedings' should be taken to mean disciplinary proceedings identified as such by regulations made under the Police Act 1996 s 50 (as amended): see PARA 228 ante. The Police (Conduct) Regulations 2004, SI 2004/645 (see PARA 245 et seq ante) and the Police (Efficiency) Regulations 1999, SI 1999/732 (see PARA 280 et seq ante) are for this purpose disciplinary proceedings.

3 As to the principles of natural justice see JUDICIAL REVIEW vol 61 (2100) PARAS 629-647.

4 See *Ridge v Baldwin* [1964] AC 40, [1963] 2 All ER 66, HL, where the dismissal of a chief constable by a watch committee under the Municipal Corporations Act 1882 (repealed) was held to be null and void for a failure to observe the requirements of natural justice notwithstanding that the Secretary of State had upheld the decision on appeal under the Police (Appeals) Act 1927 (repealed).

5 The courts distinguish between disciplinary issues which may be subject to judicial review in appropriate cases and operational or management decisions in respect of which the courts will not exercise supervisory jurisdiction, except in the most exceptional circumstances: see *R (on the application of Tucker) v Director General of the National Crime Squad* [2003] EWCA Civ 57, [2003] ICR 599, [2003] IRLR 439; *R (on the application of Morgan) v Chief Constable of South Wales* [2001] EWHC Admin 262, [2001] All ER (D) 84 (Apr); *R (on the application of O'Leary) v Chief Constable of the Merseyside Police* [2001] EWHC Admin 57, [2001] All ER (D) 102 (Feb). As to judicial review see CIVIL PROCEDURE vol 12 (2009) PARA 1530; JUDICIAL REVIEW.

6 See *R v Board of Visitors of Hull Prison, ex p St Germain* [1979] QB 425 at 450-451, [1979] 1 All ER 701 at 713, CA, per Megaw LJ; *Buckoke v Greater London Council* [1971] Ch 655, [1971] 2 All ER 254 at 259, CA, per Lord Denning MR.

7 See note 4 supra.

8 See the Police Act 1996 s 85(1); and PARA 300 et seq ante.

9 See *R v Board of Visitors of Hull Prison, ex p St Germain* [1979] QB 425 at 448, [1979] 1 All ER 701 at 711, CA, per Megaw LJ, and at 456 and 717 per Shaw LJ; cf *Gee v General Medical Council* [1987] 2 All ER 193, [1987] 1 WLR 564. See also *R (on the application of Wilkinson) v Chief Constable of West Yorkshire* [2002] EWHC 2353 (Admin), [2002] All ER (D) 310 (Oct), in which the court accepted jurisdiction in a challenge to a decision of a chief constable to submit allegations to disciplinary proceedings.

## UPDATE

### 315 Judicial review of disciplinary proceedings

NOTE 2--SI 1999/732 replaced: Police (Performance) Regulations 2008, SI 2008/2862. SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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## (iv) Complaints

### A. INDEPENDENT POLICE COMPLAINTS COMMISSION

#### 316. The Independent Police Complaints Commission.

The Independent Police Complaints Commission is a body corporate<sup>1</sup>. The Commission consists of a chairman appointed by Her Majesty<sup>2</sup>, and not less than ten other members appointed by the Secretary of State<sup>3</sup>.

A person must not be appointed as the chairman of the Commission, or as another member of the Commission, if:

- 127 (1) he holds or has held office as a constable<sup>4</sup> in any part of the United Kingdom<sup>5</sup>;
- 128 (2) he is or has been under the direction and control of a chief officer<sup>6</sup> or of any person holding an equivalent office in Scotland or Northern Ireland<sup>7</sup>;
- 129 (3) he is a person in relation to whom a designation<sup>8</sup> is or has been in force<sup>9</sup>;
- 130 (4) he is a person in relation to whom an accreditation<sup>10</sup> is or has been in force<sup>11</sup>;
- 131 (5) he is or has been the chairman or a member of, or a member of the staff of, the Serious Organised Crime Agency<sup>12</sup>;
- 132 (6) he is or has been the chairman or chief executive of, or another member of, or another member of the staff of, the National Policing Improvement Agency<sup>13</sup>;
- 133 (7) he has been a member of the National Criminal Intelligence Service or the National Crime Squad<sup>14</sup>; or
- 134 (8) he is or has at any time been a member of a body of constables which at the time of his membership is or was a body of constables in relation to which any complaints or misconduct procedures are or were<sup>15</sup> in force<sup>16</sup>.

An appointment made in contravention of these provisions<sup>17</sup> has no effect<sup>18</sup>.

The Commission is not to be regarded as the servant or agent of the Crown<sup>19</sup>, and does not enjoy any status, privilege or immunity of the Crown<sup>20</sup>. The Commission's property is not to be regarded as property of, or property held on behalf of, the Crown<sup>21</sup>. The Commission is a public authority for the purposes of the Freedom of Information Act 2000<sup>22</sup>. In carrying out its functions, the Commission must have due regard to the need to eliminate unlawful racial

discrimination, and to promote equality of opportunity and good relations between persons of different racial groups<sup>23</sup>.

- 1 See the Police Reform Act 2002 s 9(1). As to bodies corporate see COMPANIES; CORPORATIONS. The Independent Police Complaints Commission replaces the Police Complaints Authority established under the Police Act 1996 Pt IV Ch I (ss 65-83) (repealed) which ceases to exist on such day as the Secretary of State may by order appoint: see the Police Reform Act 2002 s 9(7). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 107 note 15 ante.
- 2 Ibid s 9(2)(a). As to the chairman see PARA 317 post.
- 3 Ibid s 9(2)(b). As to members see PARA 319 post.
- 4 As to the office of constable see PARA 101 et seq ante.
- 5 Police Reform Act 2002 s 9(3)(a). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.
- 6 'Chief officer' means the chief officer of police of any police force: ibid s 29(1). For the meaning of 'chief officer of police' see PARA 105 note 7 ante. For the meaning of 'police force' see PARA 102 note 11 ante.
- 7 Ibid s 9(3)(b).
- 8 Ie under ibid s 39: see PARA 531 post.
- 9 Ibid s 9(3)(c).
- 10 Ie under ibid s 41 (see PARA 533 post) or s 41A (as added) (see PARA 534 post).
- 11 Ibid s 9(3)(d).
- 12 Ibid s 9(3)(da) (added by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 2(a)). As to the Serious Organised Crime Agency see PARA 430 et seq post.
- 13 Police Reform Act 2002 s 9(3)(db) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 80, 81). As to the National Policing Improvement Agency see PARA 223 ante.
- 14 Police Reform Act 2002 s 9(3)(e) (amended by the Serious Organised Crime and Police Act 2005 ss 55(1), 174(2), Sch 2 paras 1, 2(b), Sch 17 Pt 2). The National Criminal Intelligence Service and the National Crime Squad ceased to exist on 1 April 2006: see the Serious Organised Crime and Police Act 2005 s 1(3); and the NCIS and NCS (Abolition) Order 2006, SI 2006/540 art 2.
- 15 Ie by virtue of an agreement or order under the Police Reform Act 2002 s 26 (see PARA 347 post), the Police Act 1996 s 78 (repealed) or the Police and Criminal Evidence Act 1984 s 96 (repealed) (which made provision corresponding to that made by the Police Reform Act 2002 s 26: s 9(3)(f)(i), (ii)).
- 16 Ibid s 9(3)(f).
- 17 Ie in contravention of ibid s 9(3) (as amended): see the text to notes 4-16 supra.
- 18 Ibid s 9(4).
- 19 Ibid s 9(5)(a).
- 20 Ibid s 9(5)(b). As to the legal status of such bodies see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 951 et seq. As to Crown immunity see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 382 et seq; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 101 et seq; STATUTES vol 44(1) (Reissue) PARA 1321.
- 21 Ibid s 9(5). As to Crown property generally see CROWN PROPERTY.
- 22 See the Freedom of Information Act 2000 s 3(1)(a)(i), Sch 1 Pt VI (as amended); and CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583.
- 23 See the Race Relations Act 1976 s 71(1) (as substituted), Sch 1A Pt III (as added); and DISCRIMINATION vol 13 (2007 Reissue) PARA 469.

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### **317. The chairman.**

The chairman of the Independent Police Complaints Commission<sup>1</sup> holds office as chairman of the Commission in accordance with the terms of his appointment<sup>2</sup>. The appointment of the chairman of the Commission is for a term not exceeding five years; but the chairman is eligible for re-appointment at the end of his term of office<sup>3</sup>.

A person who has been sentenced to a term of imprisonment<sup>4</sup> of three months or more must not, at any time in the five years following the day on which he was sentenced, be appointed as chairman of the Commission; and an appointment made in contravention of this provision has no effect<sup>5</sup>.

The chairman of the Commission may be removed from office by Her Majesty either at his own request<sup>6</sup> or on being advised by the Secretary of State<sup>7</sup> that there are grounds for the removal of the chairman<sup>8</sup>. The following are grounds for removing the chairman from office:

- 135 (1) that he has failed without reasonable excuse to carry out the functions of his office for a continuous period of three months<sup>9</sup>;
- 136 (2) that he has become a person<sup>10</sup> ineligible for appointment as chairman or a member of the Commission<sup>11</sup>;
- 137 (3) that he has, since his appointment, been sentenced to imprisonment for a term of three months or more<sup>12</sup>;
- 138 (4) that he is a person who: (a) has had a bankruptcy order made against him<sup>13</sup>; (b) has had his estate sequestrated<sup>14</sup>; or (c) has made a composition or arrangement with, or granted a trust deed for, his creditors<sup>15</sup>;
- 139 (5) that he is subject to a directors disqualification order<sup>16</sup> or an order<sup>17</sup> relating to the failure to pay under a county court administration order<sup>18</sup>;
- 140 (6) that he has acted improperly in relation to his duties<sup>19</sup>; or
- 141 (7) that he is otherwise unable or unfit to perform his duties<sup>20</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 ante.

2 Police Reform Act 2002 s 9(6), Sch 2 para 1(1). As to the appointment of the chairman see PARAS 316-317 ante.

3 Ibid Sch 2 para 1(3).

4 For the purposes of ibid Sch 2 para 1, a sentence of imprisonment for any term the whole or part of which is suspended is taken to be a sentence of imprisonment for the whole term: Sch 2 para 1(6). As to suspended prison sentences see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq.

5 Ibid Sch 2 para 1(2).

6 Ibid Sch 2 para 1(3)(a).

7 As to the Secretary of State see PARA 107 note 15 ante.

8 Police Reform Act 2002 Sch 2 para 1(3)(b).

9 Ibid Sch 2 para 1(5)(a). For the meaning of 'month' see PARA 140 note 17 ante.

10 Ie a person falling within one or more paragraphs of ibid s 9(3) (as amended): see PARA 316 ante.



- 11 Ibid Sch 2 para 1(5)(b).
- 12 Ibid Sch 2 para 1(5)(c). See also note 4 *supra*.
- 13 Ibid Sch 2 para 1(5)(d)(i).
- 14 Ibid Sch 2 para 1(5)(d)(ii).
- 15 Ibid Sch 2 para 1(5)(d)(iii). As to bankruptcy and arrangements and compositions with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.
- 16 Ibid Sch 2 para 1(5)(e)(i). A directors disqualification order is an order under the Company Directors Disqualification Act 1986 (see COMPANIES vol 15 (2009) PARA 1575 et seq) or the Companies (Northern Ireland) Order 1989, SI 1989/2404 (NI 18), Pt II: Police Reform Act 2002 Sch 2 para 1(5)(e)(i).
- 17 It is an order under the Insolvency Act 1986 s 429(2)(b): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 910.
- 18 Police Reform Act 2002 Sch 2 para 1(5)(e)(ii).
- 19 Ibid Sch 2 para 1(5)(f).
- 20 Ibid Sch 2 para 1(5)(g).

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### **318. Deputy chairmen.**

The Secretary of State<sup>1</sup> may appoint not more than two deputy chairmen of the Independent Police Complaints Commission<sup>2</sup> from amongst its members<sup>3</sup>. A person holds office as a deputy chairman of the Commission in accordance with the terms of his appointment<sup>4</sup>. A deputy chairman of the Commission may at any time resign his office as a deputy chairman by notice in writing<sup>5</sup> to the Secretary of State<sup>6</sup>.

A person who ceases to hold office as a member of the Commission ceases at the same time to hold office as deputy chairman of the Commission<sup>7</sup>. A deputy chairman of the Commission who is re-appointed as a member from the time that would otherwise have been the end of his term of office as a member ceases to be a deputy chairman at that time unless he is also re-appointed to that office<sup>8</sup>.

- 1 As to the Secretary of State see PARA 107 note 15 *ante*.
- 2 As to the Independent Police Complaints Commission see PARA 316 *ante*.
- 3 Police Reform Act 2002 s 9(6), Sch 2 para 3(1). As to the chairman of the Commission see PARA 317 *ante*; and as to the members of the Commission see PARA 319 *post*.
- 4 Ibid Sch 2 para 3(3).
- 5 For the meaning of 'writing' see PARA 115 note 9 *ante*.
- 6 Police Reform Act 2002 Sch 2 para 3(4).
- 7 Ibid Sch 2 para 3(2).
- 8 Ibid Sch 2 para 3(5).

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### **319. Ordinary members of the Commission.**

A person holds office as an ordinary member<sup>1</sup> of the Independent Police Complaints Commission in accordance with the terms of his appointment<sup>2</sup>. An appointment as an ordinary member may be to whole or to part-time membership of the Commission<sup>3</sup>. A person may not be appointed to be an ordinary member for a term of more than five years; but an ordinary member is eligible for re-appointment at the end of his term of office<sup>4</sup>. A person who has been sentenced to a term of imprisonment<sup>5</sup> of three months<sup>6</sup> or more must not, at any time in the five years following the day on which he is sentenced, be appointed as an ordinary member; and an appointment made in contravention of this provision has no effect<sup>7</sup>.

An ordinary member may at any time resign his office as a member of the Commission by notice in writing<sup>8</sup> to the Secretary of State<sup>9</sup>. The Secretary of State may at any time remove a person from office as an ordinary member if he is satisfied that that person:

- 142 (1) has failed without reasonable excuse to carry out the functions of his office for a continuous period of three months beginning not earlier than six months before that time<sup>10</sup>;
- 143 (2) has become a person<sup>11</sup> ineligible for appointment as chairman or member of the Commission<sup>12</sup>;
- 144 (3) has, since his appointment, been sentenced to imprisonment for a term of three months or more<sup>13</sup>;
- 145 (4) is a person who: (a) has had a bankruptcy order made against him<sup>14</sup>; (b) has had his estate sequestrated<sup>15</sup>; or (c) has made a composition or arrangement with, or granted a trust deed for, his creditors<sup>16</sup>;
- 146 (5) is subject to a directors disqualification order<sup>17</sup> or an order<sup>18</sup> relating to the failure to pay under a county court administration order<sup>19</sup>;
- 147 (6) has acted improperly in relation to his duties<sup>20</sup>; or
- 148 (7) is otherwise unable or unfit to perform his duties<sup>21</sup>.

1 'Ordinary member' means a member of the Independent Police Complaints Commission other than the chairman: Police Reform Act 2002 s 9(6), Sch 2 para 2(8). As to the Independent Police Complaints Commission see PARA 316 ante. As to the chairman see PARA 317 ante.

2 Ibid Sch 2 para 2(1). This provision is expressed to be subject to the provisions of Sch 2. As to the appointment of members of the Commission see PARA 316 ante.

3 Ibid Sch 2 para 2(2).

4 Ibid Sch 2 para 2(4).

5 For the purposes of ibid Sch 2 para 2, a sentence of imprisonment for any term the whole or part of which is suspended is taken to be a sentence of imprisonment for the whole term: Sch 2 para 2(7). As to suspended prison sentences see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq.

6 For the meaning of 'month' see PARA 140 note 17 ante.

7 Police Reform Act 2002 Sch 2 para 2(3).

8 For the meaning of 'writing' see PARA 115 note 9 ante.

9 Police Reform Act 2002 Sch 2 para 2(5). As to the Secretary of State see PARA 107 note 15 ante.

10 Ibid Sch 2 para 2(6)(a).

- 11 le falling within one or more paragraphs of *ibid* s 9(3) (as amended): see *PARA 316 ante*.
- 12 *Ibid* Sch 2 para 2(6)(b).
- 13 *Ibid* Sch 2 para 2(6)(c). See also note 5 *supra*.
- 14 *Ibid* Sch 2 para 2(6)(d)(i).
- 15 *Ibid* Sch 2 para 2(6)(d)(ii).
- 16 *Ibid* Sch 2 para 2(6)(d)(iii). As to bankruptcy and arrangements and compositions with creditors see *BANKRUPTCY AND INDIVIDUAL INSOLVENCY*.
- 17 *Ibid* Sch 2 para 2(6)(e)(i). A directors disqualification order is an order under the Company Directors Disqualification Act 1986 (see *COMPANIES* vol 15 (2009) *PARA 1575 et seq*) or the Companies (Northern Ireland) Order 1989, SI 1989/2404 (NI 18), Pt II: Police Reform Act 2002 Sch 2 para 2(6)(e)(i).
- 18 le an order under the Insolvency Act 1986 s 429(2)(b): see *BANKRUPTCY AND INDIVIDUAL INSOLVENCY* vol 3(2) (2002 Reissue) *PARA 910*.
- 19 Police Reform Act 2002 Sch 2 para 2(6)(e)(ii).
- 20 *Ibid* Sch 2 para 2(6)(f).
- 21 *Ibid* Sch 2 para 2(6)(g).

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### **320. Remuneration of members.**

The Secretary of State<sup>1</sup> may pay, or make such payments towards the provision of, such remuneration, pensions, allowances or gratuities to or in respect of the chairman<sup>2</sup>, deputy chairmen<sup>3</sup> and members<sup>4</sup> of the Independent Police Complaints Commission<sup>5</sup>, or any of them, as he may determine<sup>6</sup>. Where a person ceases, otherwise than on the expiry of his term of office, to hold office as chairman, deputy chairman or member of the Commission<sup>7</sup>, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation<sup>8</sup>, the Secretary of State may direct the Commission to make a payment to that person of such amount as the Secretary of State may determine<sup>9</sup>.

- 1 As to the Secretary of State see *PARA 107* note 15 *ante*.
- 2 As to the chairman see *PARA 317 ante*.
- 3 As to deputy chairmen see *PARA 318 ante*.
- 4 As to members see *PARA 319 ante*.
- 5 As to the Independent Police Complaints Commission see *PARA 316 ante*.
- 6 Police Reform Act 2002 s 9(6), Sch 2 para 4(1).
- 7 *Ibid* Sch 2 para 4(2)(a).
- 8 *Ibid* Sch 2 para 4(2)(b).
- 9 *Ibid* Sch 2 para 4(2).

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### 321. The chief executive.

The Independent Police Complaints Commission<sup>1</sup> has a chief executive<sup>2</sup>. It is for the Commission to appoint the person to be its chief executive<sup>3</sup>. The approval of the Secretary of State is required for any appointment by the Commission of a person to be its chief executive<sup>4</sup>.

The Commission's chief executive is appointed on such terms and conditions and has such functions as the Commission may, with the approval of the Secretary of State, determine<sup>5</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 ante.

2 Police Reform Act 2002 s 9(6), Sch 2 para 5(1).

3 Ibid Sch 2 para 5(2). This provision is expressed to be subject to Sch 2 para 5(3) (see the text to note 4 infra) and to Sch 2 para 5(5). The first appointment of a person to be the chief executive of the Commission was made by the Secretary of State, instead of by the Commission; and the terms and conditions on which that appointment was made were determined by the Secretary of State, instead of by the Commission: see Sch 2 para 5(5). As to the Secretary of State see PARA 107 note 15 ante.

4 Ibid Sch 2 para 5(3).

5 Ibid Sch 2 para 5(4). This provision is expressed to be subject to Sch 2 para 5(5): see note 3 infra.

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### 322. Staff.

The Independent Police Complaints Commission<sup>1</sup> may appoint such employees, on such terms and conditions, as appear to it to be appropriate<sup>2</sup>. The Commission may make arrangements with: (1) the chief officer of police<sup>3</sup> of any police force<sup>4</sup> maintained for a police area<sup>5</sup> in England and Wales<sup>6</sup>; (2) the chief constable of any police force maintained for a police area in Scotland<sup>7</sup>; or (3) the chief constable of the Police Service of Northern Ireland<sup>8</sup>, under which members of his force are engaged on temporary service with the Commission<sup>9</sup>. The Commission may make such other arrangements for its staffing as it thinks fit<sup>10</sup>. The approval of the Secretary of State<sup>11</sup> as to numbers and as to the terms and conditions of staff is required for the exercise by the Commission of its powers under these<sup>12</sup> provisions<sup>13</sup>.

The Commission is liable in respect of unlawful conduct of seconded constables<sup>14</sup> in the carrying out, or purported carrying out, of their functions as members of the Commission's staff in the like manner as an employer is liable<sup>15</sup> in respect of any unlawful conduct of his employees in the course of their employment<sup>16</sup>. Accordingly, the Commission is treated in the case of any such unlawful conduct which is a tort, as a joint tortfeasor<sup>17</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 ante.

2 Police Reform Act 2002 s 9(6), Sch 2 para 6(1). As to the chief executive of the Commission see PARA 321 ante. Where a person who is employed by the Commission, and is by reference to that employment a participant in a scheme under the Superannuation Act 1972 s 1 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567), is appointed as the chairman or as a deputy chairman of the Commission or as a member of it, the Treasury may determine that his service in that office be treated for the purposes of the scheme as service as an employee of the Commission; and his rights under the scheme are not affected by anything done under the Police Reform Act 2002 Sch 2 para 4 (see PARA 320 ante): Sch 2 para 7(1). As to the chairman see PARA 317 ante; as to deputy chairmen see PARA 318 ante; and as to members of the Commission see PARA 319 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

The Employers' Liability (Compulsory Insurance) Act 1969 (see EMPLOYMENT vol 39 (2009) PARA 40 et seq; INSURANCE vol 25 (2003 Reissue) PARA 685 et seq) does not require insurance to be effected by the Commission: Police Reform Act 2002 Sch 2 para 7(2).

3 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

4 For the meaning of 'police force' see PARA 102 note 11 ante.

5 For the meaning of 'police area' see PARA 136 note 2 ante.

6 Police Reform Act 2002 Sch 2 para 6(2)(a).

7 Ibid Sch 2 para 6(2)(b).

8 Ibid Sch 2 para 6(2)(c).

9 Ibid Sch 2 para 6(2). A member of a police force on temporary service with the Commission is under the direction and control of the Commission: Sch 2 para 6(4). As to police officers engaged on service outside their force see the Police Act 1996 s 97 (as amended); and PARA 428 post.

10 Police Reform Act 2002 Sch 2 para 6(3).

11 As to the Secretary of State see PARA 107 note 15 ante.

12 Ie under the Police Reform Act 2002 Sch 2 para 6.

13 Ibid Sch 2 para 6(5).

14 'Seconded constables' means persons serving as members of the Commission's staff without being employed by it: ibid Sch 2 para 8(3).

15 As to such liability see TORT vol 45(2) (Reissue) PARA 329.

16 Police Reform Act 2002 Sch 2 para 8(1).

17 Ibid Sch 2 para 8(2). As to joint tortfeasors see TORT vol 45(2) (Reissue) PARA 683.

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### **323. Proceedings.**

The arrangements for the proceedings of the Independent Police Complaints Commission<sup>1</sup> (including the quorum for meetings and the establishment of committees) are such as the Commission may determine<sup>2</sup>. The arrangements may include provision for the committees established under the arrangements to include members of the Commission's staff<sup>3</sup> and other persons who are not members of the Commission<sup>4</sup>. The arrangements may include provision for persons selected by the Commission to attend meetings of the Commission or of any committee established by it<sup>5</sup>.

The arrangements may provide for the carrying out, under the general direction of the Commission, of any of the Commission's functions<sup>6</sup>: (1) by a committee established by the Commission<sup>7</sup>; (2) by one or more of the members of the Commission<sup>8</sup>; or (3) by the chief executive or by one or more members of the Commission's staff<sup>9</sup>. The making of arrangements by virtue of heads (1) to (3) above requires the consent of the Secretary of State<sup>10</sup>.

The validity of any proceedings of the Commission or of any of its committees is not affected by any defect in the appointment of the chairman, a deputy chairman or any member of the Commission<sup>11</sup>, or any vacancy in the office of chairman or among the members of the Commission<sup>12</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 ante.

2 Police Reform Act 2002 s 9(6), Sch 2 para 10(1).

3 As to staff see PARA 322 ante.

4 Police Reform Act 2002 Sch 2 para 10(2). The Commission may pay such remuneration and allowances as it may determine to members of committees established by it who are neither members of the Commission nor members of its staff: Sch 2 para 10(4)(a). As to members of the Commission see PARA 316 ante.

5 Ibid Sch 2 para 10(3). The Commission may make such payments for the reimbursement of expenses incurred by persons attending meetings in accordance with arrangements made by virtue of Sch 2 para 10(3) as it may determine: Sch 2 para 10(4)(b).

6 As to the functions of the Commission see PARA 327 post.

7 Police Reform Act 2002 Sch 2 para 10(5)(a).

8 Ibid Sch 2 para 10(5)(b).

9 Ibid Sch 2 para 10(5)(c). As to the chief executive see PARA 321 ante.

10 Ibid Sch 2 para 10(6). As to the Secretary of State see PARA 107 note 15 ante.

11 Ibid Sch 2 para 11(1). As to the chairman see PARA 317 ante; as to deputy chairmen see PARA 318 ante; and as to other members see PARA 319 ante.

12 Ibid Sch 2 para 11(2).

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### 324. Documents.

The application of the seal of the Independent Police Complaints Commission<sup>1</sup> must be authenticated by the signature of any member of the Commission<sup>2</sup> or any other person who has been authorised by the Commission (whether generally or specially) for that purpose<sup>3</sup>.

A document purporting to be duly executed by the Commission under its seal<sup>4</sup>, or signed on its behalf<sup>5</sup>, must be received in evidence and is, unless the contrary is shown, to be taken to be so executed or signed<sup>6</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 ante.

2 Police Reform Act 2002 s 9(6), Sch 2 para 12(a). As to the members of the Commission see PARA 316 ante.

- 3 Ibid Sch 2 para 12(b).
- 4 Ibid Sch 2 para 13(a).
- 5 Ibid Sch 2 para 13(b).
- 6 Ibid Sch 2 para 13. As to evidence generally see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

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### **325. Finance.**

The Secretary of State<sup>1</sup> may pay to the Independent Police Complaints Commission<sup>2</sup>: (1) sums equal to any amounts paid or falling to be paid<sup>3</sup> by it<sup>4</sup>; and (2) such other sums as appear to him to be appropriate for enabling it to meet the expenses incurred or to be incurred by it in the carrying out of its functions<sup>5</sup>.

Unless otherwise directed by the Secretary of State<sup>6</sup>, the Commission must pay to the Secretary of State all sums received by it<sup>7</sup> in the course of, or in connection with, the carrying out of its functions<sup>8</sup>. Any such sums received by the Secretary of State must be paid into the Consolidated Fund<sup>9</sup>.

The Commission must not borrow money unless authorised to do so (whether generally or specially) by the Secretary of State<sup>10</sup>.

- 1 As to the Secretary of State see PARA 107 note 15 ante.
- 2 As to the Independent Police Complaints Commission see PARA 316 ante.
- 3 Ie under any provision of the Police Reform Act 2002 other than s 9(6), Sch 2 para 15 (see the text to notes 6-9 infra).
- 4 Ibid Sch 2 para 14(a).
- 5 Ibid Sch 2 para 14(b). As to the functions of the Commission see PARA 327 post. As to remuneration of members see PARA 320 ante; as to the appointment of a chief executive see PARA 321 ante; and as to the appointment of staff see PARA 322 ante.
- 6 See ibid Sch 2 para 15(2).
- 7 Ie otherwise than under ibid Sch 2 para 14: see the text to notes 1-5 supra.
- 8 Ibid Sch 2 para 15(1).
- 9 Ibid Sch 2 para 15(3). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.
- 10 Ibid Sch 2 para 16.

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### **326. Accounts.**

The Independent Police Complaints Commission<sup>1</sup> must: (1) keep proper accounts and proper records in relation to the accounts<sup>2</sup>; (2) prepare in respect of each financial year of the Commission<sup>3</sup> a statement of accounts in such form as the Secretary of State<sup>4</sup> may direct<sup>5</sup>; and (c) send copies of the statement to the Secretary of State and the Comptroller and Auditor General<sup>6</sup> before the end of August in the financial year of the Commission following that to which the statement relates<sup>7</sup>. The Comptroller and Auditor General must examine, certify and report on every such statement received by him<sup>8</sup> and lay copies of every such statement, and of his report on it, before Parliament<sup>9</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 ante.

2 Police Reform Act 2002 s 9(6), Sch 2 para 17(1)(a).

3 The following are financial years of the Commission: (1) the period beginning with the day on which the Commission is established and ending with 31 March falling next after that day (ibid Sch 2 para 18(a)); and (2) every subsequent period of 12 months ending with 31 March (Sch 2 para 18(b)). The Commission was established on 1 April 2003: see the Police Reform Act 2002 (Commencement No 4) Order 2003. SI 2003/808, art 2(a).

4 As to the Secretary of State see PARA 107 note 15 ante.

5 Police Reform Act 2002 Sch 2 para 17(1)(b).

6 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

7 Police Reform Act 2002 Sch 2 para 17(1)(c).

8 Ibid Sch 2 para 17(2)(a).

9 Ibid Sch 2 para 17(2)(b).

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### **327. General functions of the Commission.**

The functions of the Independent Police Complaints Commission<sup>1</sup> are:

149 (1) to secure the maintenance by the Commission itself, and by police authorities<sup>2</sup> and chief officers<sup>3</sup>, of suitable arrangements with respect to the following matters<sup>4</sup>:

11

22. (a) the handling of complaints<sup>5</sup> made about the conduct<sup>6</sup> of persons serving with the police<sup>7</sup>;

23. (b) the recording of matters from which it appears that there may have been conduct by such persons which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings<sup>8</sup>;

24. (c) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a person serving with the police<sup>9</sup>;

25. (d) the manner in which any such complaints or any such matters as are mentioned in head (b) or head (c) above are investigated or otherwise handled and dealt with<sup>10</sup>;

12



- 150 (2) to keep under review all arrangements maintained with respect to those matters<sup>11</sup>;
- 151 (3) to secure that arrangements maintained with respect to those matters comply with the statutory requirements<sup>12</sup>, are efficient and effective, and contain and manifest an appropriate degree of independence<sup>13</sup>;
- 152 (4) to secure that public confidence is established and maintained in the existence of suitable arrangements with respect to those matters and with the operation of the arrangements that are in fact maintained with respect to those matters<sup>14</sup>;
- 153 (5) to make such recommendations, and to give such advice, for the modification of the arrangements maintained with respect to those matters, and also of police practice in relation to other matters, as appear, from the carrying out by the Commission of its other functions, to be necessary or desirable<sup>15</sup>;
- 154 (6) to such extent as it may be required to do so by regulations made by the Secretary of State, to carry out functions in relation to bodies of constables maintained otherwise than by police authorities which broadly correspond to those conferred on the Commission in relation to police forces by heads (1) to (5) above<sup>16</sup>;
- 155 (7) to carry out functions in relation to the Serious Organised Crime Agency<sup>17</sup> which correspond to those conferred on the Commission in relation to police forces by head (5) above<sup>18</sup>; and
- 156 (8) to carry out functions in relation to the National Policing Improvement Agency which correspond to those conferred on the Commission in relation to police forces by head (5) above<sup>19</sup>.

The Commission also has the functions which are conferred on it by: (i) any agreement<sup>20</sup> with or order relating to other bodies of constables<sup>21</sup>; (ii) any agreement<sup>22</sup> with the Serious Organised Crime Agency<sup>23</sup>; (iii) any agreement<sup>24</sup> with the National Policing Improvement Agency<sup>25</sup>; (iv) any regulations<sup>26</sup> relating to police powers for contracted-out staff<sup>27</sup>; or (v) any regulations or arrangements relating to disciplinary or similar proceedings against persons serving with the police, or against members of any body of constables maintained otherwise than by a police authority<sup>28</sup>.

It is the duty of the Commission to exercise the powers and perform the duties conferred on it<sup>29</sup> in the manner that it considers best calculated for the purpose of securing the proper carrying out of its functions set out in heads (1) to (8) and (i) to (v) above<sup>30</sup>, and to secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by persons in relation to whose conduct the Commission has functions<sup>31</sup>. It is also the duty of the Commission to enter into arrangements with the chief inspector of constabulary<sup>32</sup> for the purpose of securing co-operation, in the carrying out of their respective functions, between the Commission and the inspectors of constabulary<sup>33</sup>, and to provide those inspectors with all such assistance and co-operation as may be required by those arrangements, or as otherwise appears to the Commission to be appropriate, for facilitating the carrying out by those inspectors of their functions<sup>34</sup>. If it appears to the Commission that it is necessary to do so in order to carry out its functions efficiently, the Commission may, with the consent of the Secretary of State, set up regional offices in places in England and Wales<sup>35</sup>. The Commission may do anything which appears to it to be calculated to facilitate, or is incidental or conducive to, the carrying out of its functions<sup>36</sup>.

Nothing in these provisions<sup>37</sup> confers any function on the Commission in relation to so much of any complaint or conduct matter<sup>38</sup> as relates to the direction and control of a police force by: (A) the chief officer of police<sup>39</sup> of that force<sup>40</sup>; or (B) a person for the time being carrying out the functions of the chief officer of police of that force<sup>41</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 ante.

2 For the meaning of 'police authority' see PARA 139 note 1 ante.

3 For the meaning of 'chief officer' see PARA 316 note 6 ante.

4 Police Reform Act 2002 s 10(1)(a).

5 For the meaning of 'complaint' see PARA 329 post.

6 For the meaning of 'conduct' see PARA 329 note 3 post.

7 Police Reform Act 2002 s 10(2)(a). A 'person is serving with the police' if: (1) he is a member of a police force; (2) he is an employee of a police authority who is under the direction and control of a chief officer; or (3) he is a special constable who is under the direction and control of a chief officer: ss 12(7), 29(1). The City of London Police Commissioner is treated for these purposes as if he were a member of the City of London police force: s 29(7). For the meaning of 'police force' see PARA 102 note 11 ante. As to special constables see PARAS 108-112 ante. As to the City of London Police Commissioner see PARA 187 ante; and as to the City of London police force see PARA 138 ante.

The Police Reform Act 2002 Pt 2 (ss 9-29) (as amended) and the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, apply in relation to a detention officer or escort officer as they apply in relation to a person serving with the police: reg 28(1). However, this applies only in so far as a complaint relates to, or another instance of misconduct involves, the carrying out of functions for the purposes of which any power or duty is conferred or imposed by a designation under the Police Reform Act 2002 s 39(2) (police powers for contracted-out staff: see PARA 531 post): Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 28(2). References in the Police Reform Act 2002 Pt 2 (as amended) to a person who is under the direction and control of a chief officer include references to a detention officer or escort officer who has been so designated by that chief officer: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 28(3). 'Detention officer' means a person designated under the Police Reform Act 2002 s 39(2)(a) (see PARA 531 post); and 'escort officer' means a person designated under s 39(2)(b) (see PARA 531 post): Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 28(4).

8 Police Reform Act 2002 s 10(2)(b). 'Disciplinary proceedings' means: (1) in relation to a member of a police force or a special constable, proceedings under any regulations made by virtue of the Police Act 1996 s 50 (as amended) (see PARA 228 ante) or s 51 (as amended) (see PARA 110 ante) and identified as disciplinary proceedings by those regulations; and (2) in relation to a person serving with the police who is not a member of a police force or a special constable, proceedings identified as such by regulations made by the Secretary of State for the purposes of the Police Reform Act 2002 Pt 2 (as amended): s 29(1). In relation to a person serving with the police who is not a member of a police force or a special constable, 'disciplinary proceedings' means any proceedings or management process during which the conduct of such a person is considered in order to determine whether a sanction or punitive measure is to be imposed against him in relation to that conduct: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 30. As to the Secretary of State see PARA 107 note 15 ante. As to the power of the Secretary of State to give guidance to the Commission concerning the discharge of any of its functions under regulations in relation to disciplinary proceedings see the Police Act 1996 s 87 (as amended); and PARA 248 ante.

9 Police Reform Act 2002 s 10(2)(ba) (added by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 2(1), (2)). For the meaning of 'serious injury' see PARA 329 note 15 post.

10 Police Reform Act 2002 s 10(2)(c) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 2(1), (3)).

11 Police Reform Act 2002 s 10(1)(b).

12 Ie the requirements of *ibid* ss 11-29 (as amended): see PARA 329 et seq post.

13 *Ibid* s 10(1)(c).

14 *Ibid* s 10(1)(d).

15 *Ibid* s 10(1)(e) (amended by the Serious Organised Crime and Police Act 2005 ss 55(1), 174(2), Sch 2 paras 1, 3(1), (2)(a), Sch 17 Pt 2). The Commission may, in connection with the making of any recommendation or the giving of any advice to any person for the purpose of carrying out: (1) its function under the Police Reform Act 2002 s 10(1)(e) (as amended); (2) any corresponding function conferred on it by virtue of s 10(1)(f) (as amended) (see head (6) in the text); or (3) its function under s 10(1)(g) (as added) (see head (7) in the text) or s 10(1)(h) (as added) (see head (8) in the text), impose any such charge on that person for anything done by the Commission for the purposes of, or in connection with, the carrying out of that function as it thinks fit: s 10(7) (amended by the Serious Organised Crime and Police Act 2005 Sch 2 paras 1, 3(1), (4), Sch 17 Pt 2; and the Police and Justice Act 2006 s 1(3), Sch 1 paras 80, 82(1), (4)). As to the power of the Commission to issue guidance see PARA 345 post.

16 Police Reform Act 2002 s 10(1)(f) (amended by the Serious Organised Crime and Police Act 2005 Sch 2 paras 1, 3(1), (2)(b), Sch 17 Pt 2). See also note 15 supra. As to other bodies of constables see PARA 119 et seq ante. Functions are conferred on the Commission in relation to the Commissioners for Revenue and Customs and officers of revenue and customs and for these purposes the Police Reform Act 2002 Pt 2 (as amended) applies with modifications: see the Revenue and Customs (Complaints and Misconduct) Regulations 2005, SI 2005/3311, reg 3, Schs 1-3; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 933.

17 As to the Serious Organised Crime Agency see PARA 430 et seq post.

18 Police Reform Act 2002 s 10(1)(g) (added by the Serious Organised Crime and Police Act 2005 Sch 2 paras 1, 3(1), (2)(c)). See also note 15 supra.

19 Police Reform Act 2002 s 10(1)(h) (added by the Police and Justice Act 2006 Sch 1 paras 80, 82(1), (2)). See also note 15 supra. As to the National Policing Improvement Agency see PARA 223 ante.

20 Ie under the Police Reform Act 2002 s 26: see PARA 347 post.

21 Ibid s 10(3)(b).

22 Ie under ibid s 26A (as added): see PARA 348 post.

23 Ibid s 10(3)(ba) (added by the Serious Organised Crime and Police Act 2005 Sch 2 paras 1, 3(1), (3)(b)).

24 Ie under the Police Reform Act 2002 s 26B (as added): see PARA 349 post.

25 Ibid s 10(3)(bb) (added by the Police and Justice Act 2006 Sch 1 paras 80, 82(1), (3)).

26 Ie under the Police Reform Act 2002 s 39: see PARA 531 post.

27 Ibid s 10(3)(c).

28 Ibid s 10(3)(d) (amended by the Serious Organised Crime and Police Act 2005 Sch 2 paras 1, 3(1), (3)(c), Sch 17 Pt 2).

29 Ie by the Police Reform Act 2002 ss 11-29 (as amended): see PARA 328 et seq post.

30 Ibid s 10(4)(a).

31 Ibid s 10(4)(b).

32 As to the chief inspector of constabulary and the inspectors of constabulary see PARA 206 ante.

33 Police Reform Act 2002 s 10(5)(a).

34 Ibid s 10(5)(b).

35 Ibid s 9(6), Sch 2 para 9.

36 Ibid s 10(6). This provision is expressed to be subject to ss 11-28 (as amended): see PARA 328 et seq post. As to the interpretation of a similar provision in relation to local government see LOCAL GOVERNMENT vol 69 (2009) PARA 462.

37 Ie in ibid Pt 2 (as amended).

38 For the meaning of 'conduct matter' see PARA 329 post.

39 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

40 Police Reform Act 2002 s 10(8)(a).

41 Ibid s 10(8)(b).

## UPDATE

### 327 General functions of the Commission

TEXT AND NOTES--The Secretary of State may make regulations conferring functions on the Independent Police Complaints Commission in relation to (1) the exercise by immigration officers of specified enforcement functions; (2) the exercise by officials of the Secretary of State of specified enforcement functions relating to immigration or asylum; and (3) the provision of services pursuant to arrangements relating to the discharge of functions within heads (1) and (2): Police and Justice Act 2006 s 41(1) (amended by Borders, Citizenship and Immigration Act 2009 s 30(1)). 'Immigration officer' means a person appointed as an immigration officer under the Immigration Act 1971 Sch 2 para 1 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 173); 2006 Act s 41(8). In s 41(1) the reference to enforcement functions includes, in particular, reference to powers of entry, powers to search persons or property, powers to seize or detain property, powers to arrest persons, powers to detain persons, powers to examine persons or otherwise to obtain information, including powers to take fingerprints or to acquire other personal data) and powers in connection with the removal of persons from the United Kingdom: s 41(2). The Secretary of State may also make regulations conferring functions on the Independent Police Complaints Commission in relation to (a) the exercise by designated customs officials, and officials of the Secretary of State, of customs functions within the meaning of Borders, Citizenship and Immigration Act 2009 Pt 1 (ss 1-38) (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 140C); (b) the exercise by the Director of Border Revenue, and any person exercising functions of the Director, of customs revenue functions within the meaning of the 2009 Act Pt 1; and (c) the provision of services pursuant to arrangements relating to the discharge of functions within heads (1) and (2): Police and Justice Act 2006 s 41(2A) (added by Borders, Citizenship and Immigration Act 2009 s 30(1)).

Regulations under s 41(1) may not confer functions on the Independent Police Complaints Commission in relation to the exercise by any person of a function conferred on him by or under the Immigration and Asylum Act 1999 Pt 8 (ss 147-159) (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 157, 158): 2006 Act s 41(3). Regulations under s 41(1) or (2A) (i) may apply, with or without modification, or make provision similar to any provision of or made under the Police Reform Act 2002 Pt 2 (ss 9-29) (PARA 316 et seq); (ii) may make provision for payment by the Secretary of State to or in respect of the Independent Police Complaints Commission: 2006 Act s 41(4) (amended by Borders, Citizenship and Immigration Act 2009 s 30(2)). The Independent Police Complaints Commission and the Parliamentary Commissioner for Administration may disclose information to each other for the purposes of the exercise of a function by virtue of s 41, or under the Parliamentary Commissioner Act 1967 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS): 2006 Act s 41(5). The Independent Police Complaints Commission and the Parliamentary Commissioner for Administration may jointly investigate a matter in relation to which (A) the Independent Police Complaints Commission has functions by virtue of the 2006 Act s 41; and (B) the Parliamentary Commissioner for Administration has functions by virtue of the Parliamentary Commissioner Act 1967: 2006 Act s 41(6). The UK Border Agency (Complaints and Misconduct) Regulations 2009, SI 2009/2133, have been made under the 2006 Act s 41.

See also 2002 Act s 10(9) (added by Serious Crime Act 2007 Sch 8 para 160).

### 328. Reports to the Secretary of State.

As soon as practicable after the end of each of its financial years<sup>1</sup>, the Independent Police Complaints Commission<sup>2</sup> must make a report to the Secretary of State<sup>3</sup> on the carrying out of its functions during that year<sup>4</sup>. The Commission must also make such reports to the Secretary of State about matters relating generally to the carrying out of its functions as he may, from time to time, require<sup>5</sup>. The Commission must also prepare such reports containing advice and recommendations as it thinks appropriate for the purpose of carrying out its function<sup>6</sup> in relation to the making of recommendations and the giving of advice to the police<sup>7</sup>, or any corresponding function conferred on it<sup>8</sup> in relation to other bodies of constables<sup>9</sup>.

The Commission may, from time to time, make such other reports to the Secretary of State as it considers appropriate for drawing his attention to matters which have come to the Commission's notice<sup>10</sup> and are matters that it considers should be drawn to his attention by reason of their gravity or of other exceptional circumstances<sup>11</sup>.

Where the Secretary of State receives any report under these provisions<sup>12</sup>, he must: (1) in the case of every annual report<sup>13</sup>; and (2) in the case of any other report, if and to the extent that he considers it appropriate to do so<sup>14</sup>, lay a copy of the report before Parliament and cause the report to be published<sup>15</sup>.

1 As to financial years see PARA 326 note 3 ante.

2 As to the Independent Police Complaints Commission see PARA 316 ante.

3 As to the Secretary of State see PARA 107 note 15 ante.

4 Police Reform Act 2002 s 11(1). The Commission must send a copy of every such annual report to: (1) every police authority (s 11(6)(a)); (2) the Serious Organised Crime Agency (s 11(6)(b) (substituted by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 4(1), (2))); (3) every authority that is maintaining a body of constables in relation to which any procedures are for the time being in force by virtue of any agreement or order under the Police Reform Act 2002 s 26 or by virtue of s 26(9) (see PARA 347 post) (s 11(6)(d)); and (4) the National Policing Improvement Agency (s 11(6)(e) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 80, 83(1), (2))). As to the Commission's functions see PARA 327 ante. For the meaning of 'police authority' see PARA 139 note 1 ante. As to the Serious Organised Crime Agency see PARA 430 et seq post. As to the National Policing Improvement Agency see PARA 223 ante.

5 Police Reform Act 2002 s 11(2).

6 Ie under ibid s 10(1)(e): see PARA 327 ante.

7 Ibid s 11(4)(a).

8 Ie by virtue of ibid s 10(1)(f) (as amended): see PARA 327 ante.

9 Ibid s 11(4)(b). The Commission must send a copy of every such report to: (1) the Secretary of State (s 11(10)(a)); (2) every police authority (s 11(10)(b)); (3) every chief officer (s 11(10)(c)); (4) the Serious Organised Crime Agency (s 11(10)(d) (substituted by the Serious Organised Crime and Police Act 2005 Sch 2 paras 1, 4(1), (4))); (5) every authority that is maintaining a body of constables in relation to which any procedures are for the time being in force by virtue of any agreement or order under the Police Reform Act 2002 s 26 or by virtue of s 26(9) (see PARA 347 post) (s 11(10)(f)); (6) every person who has the direction and control of such a body of constables (s 11(10)(g)); and (7) the National Policing Improvement Agency (s 11(10)(h) (added by the Police and Justice Act 2006 Sch 1 paras 80, 83(1), (4))). The Commission must, as it thinks fit, send a copy of every such report to such other persons who: (a) are referred to in the report (Police Reform Act 2002 s 11(11)(a)); or (b) appear to the Commission otherwise to have a particular interest in its contents (s 11(11)(b)). For the meaning of 'chief officer' see PARA 316 note 6 ante.

10 Ibid s 11(3)(a).

11 Ibid s 11(3)(b). The Commission must send a copy of every such report: (1) to any police authority that appears to the Commission to be concerned (s 11(7)(a)); and (2) to the chief officer of police of any police force that appears to it to be concerned (s 11(7)(b)). Where such a report relates to the Serious Organised Crime Agency, the Commission must send a copy of that report to the Agency: s 11(8) (substituted by the Serious

Organised Crime and Police Act 2005 Sch 2 paras 1, 4(1), (3)). Where such a report relates to a body of constables maintained by an authority other than a police authority, the Commission must send a copy of that report to that authority and to the person having the direction and control of that body of constables: Police Reform Act 2002 s 11(9). Where such a report relates to the National Policing Improvement Agency, the Commission must send a copy of that report to the Agency: s 11(9A) (added by the Police and Justice Act 2006 Sch 1 paras 80, 83(1), (3)). The Commission must, as it thinks fit, also send a copy of every such report to such other persons who: (a) are referred to in the report (Police Reform Act 2002 s 11(11)(a)); or (b) appear to the Commission otherwise to have a particular interest in its contents (s 11(11)(b)). For the meaning of 'chief officer of police' see PARA 105 note 7 ante. For the meaning of 'police force' see PARA 102 note 11 ante.

12 le under ibid s 11 (as amended).

13 Ibid s 11(5)(a). An annual report is a report under s 11(1): see the text to notes 1-4 supra.

14 Ibid s 11(5)(b).

15 Ibid s 11(5).

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## ***B. INVESTIGATION OF COMPLAINTS***

### **(A) IN GENERAL**

#### **329. Meanings of complaint, conduct matter and death or serious injury matter.**

In the Police Reform Act 2002<sup>1</sup>, references to a 'complaint' are references<sup>2</sup> to any complaint about the conduct<sup>3</sup> of a person serving with the police<sup>4</sup> which is made (whether in writing<sup>5</sup> or otherwise) by:

- 157 (1) a member of the public<sup>6</sup> who claims to be the person in relation to whom the conduct took place<sup>7</sup>;
- 158 (2) a member of the public not falling within head (1) above who claims to have been adversely affected by the conduct<sup>8</sup>;
- 159 (3) a member of the public who claims to have witnessed the conduct<sup>9</sup>;
- 160 (4) a person acting on behalf of a person falling within any of heads (1) to (3) above<sup>10</sup>.

'Conduct matter' means<sup>11</sup> any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have: (a) committed a criminal offence<sup>12</sup>; or (b) behaved in a manner which would justify the bringing of disciplinary proceedings<sup>13</sup>.

'Death or serious injury matter' (or 'DSI matter') means any circumstances (other than those which are or have been the subject of a complaint or which amount to a conduct matter) in or in consequence of which a person<sup>14</sup> has died or has sustained serious injury<sup>15</sup>, and in relation to which the requirements of either head (i) or head (ii) below are satisfied<sup>16</sup>. The requirements are:

- 161 (i) that at the time of the death or serious injury the person:
- 13

26. (A) had been arrested by a person serving with the police and had not been released from that arrest<sup>17</sup>; or
27. (B) was otherwise detained in the custody of a person serving with the police<sup>18</sup>; or
- 14 162 (ii) that at or before the time of the death or serious injury:
- 15 28. (A) the person had contact<sup>19</sup> (of whatever kind, and whether direct or indirect) with a person serving with the police who was acting in the execution of his duties<sup>20</sup>; and
29. (B) there is an indication that the contact may have caused (whether directly or indirectly) or contributed to the death or serious injury<sup>21</sup>.
- 16

1 le in the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended).

2 le subject to the provisions of *ibid* s 12(2)-(7) (as amended): see notes 8-10 and the text to notes 11-21 *infra*.

3 'Conduct' includes acts, omissions and statements (whether actual, alleged or inferred): *ibid* s 29(1).

4 For the meaning of 'person serving with the police' see PARA 327 note 7 *ante*.

5 For the meanings of 'writing' and 'written' see PARA 115 note 9 *ante*.

6 References, in relation to any conduct or anything purporting to be a complaint about any conduct, to a 'member of the public' include references to any person falling within any of the following descriptions (whether at the time of the conduct or at any subsequent time): (1) a person serving with the police (Police Reform Act 2002 s 29(3)(a)); (2) a member of the staff of the Serious Organised Crime Agency (s 29(3)(b) (substituted by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 9(a))); (3) a member of the staff of the National Policing Improvement Agency (Police Reform Act 2002 s 29(3)(c) (amended by the Police and Justice Act 2006 s 1(3), Sch 1 paras 80, 88)); or (4) a person engaged on relevant service within the meaning of the Police Act 1996 s 97(1)(a) or (d) (as amended) (temporary service of various kinds: see PARA 428 *post*) (Police Reform Act 2002 s 29(3)(d) (amended by the Serious Organised Crime and Police Act 2005 Sch 2 paras 1, 9(b); and the Police and Justice Act 2006 s 52, Sch 15 Pt 1A)). However, references, in relation to any conduct or to anything purporting to be a complaint about any conduct, to a 'member of the public' do not include references to: (a) a person who, at the time when the conduct is supposed to have taken place, was under the direction and control of the same chief officer as the person whose conduct it was (Police Reform Act 2002 s 29(4)(a)); or (b) a person who, at the time when the conduct is supposed to have taken place, in relation to him, or at the time when he is supposed to have been adversely affected by it or to have witnessed it, was on duty in his capacity as a person falling within heads (1)-(4) *supra* (s 29(4)(b)). As to the Serious Organised Crime Agency see PARA 430 *et seq post*. As to the National Policing Improvement Agency see PARA 223 *ante*. For the meaning of 'chief officer' see PARA 316 note 6 *ante*. See also notes 8, 9 *infra*.

7 *Ibid* s 12(1)(a).

8 *Ibid* s 12(1)(b). The complaints that are complaints by virtue of s 12(1)(b) do not, except in a specified case, include any made by or on behalf of a person who claims to have been adversely affected as a consequence only of having seen or heard the conduct, or any of the alleged effects of the conduct: s 12(3). A case is a specified case if: (1) it was only because the person in question was physically present, or sufficiently nearby, when the conduct took place or the effects occurred that he was able to see or hear the conduct or its effects (s 12(4)(a)); or (2) the adverse effect is attributable to, or was aggravated by, the fact that the person in relation to whom the conduct took place was already known to the person claiming to have suffered the adverse effect (s 12(4)(b)).

A person is 'adversely affected' if he suffers any form of loss or damage, distress or inconvenience, if he is put in danger or if he is otherwise unduly put at risk of being adversely affected: s 29(5).

9 *Ibid* s 12(1)(c). For these purposes, a person is taken to have witnessed conduct if, and only if: (1) he acquired his knowledge of that conduct in a manner which would make him a competent witness capable of giving admissible evidence of that conduct in criminal proceedings (s 12(5)(a)); or (2) he has in his possession or under his control anything which would in any such proceedings constitute admissible evidence of that conduct (s 12(5)(b)). As to the admissibility of evidence in criminal proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1359 *et seq*; CIVIL PROCEDURE vol 11 (2009) PARA 758 *et seq*.

10 Ibid s 12(1)(d). A person falling within heads (1)-(3) in the text is not to be taken to have authorised another person to act on his behalf unless: (1) that other person is for the time being designated for the purposes of the Police Reform Act 2002 Pt 2 (as amended) by the Independent Police Complaints Commission as a person through whom complaints may be made, or he is of a description of persons so designated (s 12(6)(a)); or (2) the other person has been given, and is able to produce, the written consent to his so acting of the person on whose behalf he acts (s 12(6)(b)). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

11 Ie subject to ibid s 12(3)-(7) (as amended) (see notes 8-10 supra), Sch 3 para 2(4) (see PARA 351 post) and any regulations made by virtue of s 23(2)(d) (see PARA 346 post).

12 Ibid s 12(2)(a).

13 Ibid s 12(2)(b). For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

14 Reference to a person in this provision includes a person serving with the police: ibid s 12(2D) (s 12(2A)-(2D) added by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 3).

15 Police Reform Act 2002 s 12(2A)(a) (as added: see note 14 supra). 'Serious injury' means a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function: s 29(1).

16 Ibid s 12(2A)(b) (as added: see note 14 supra).

17 Ibid s 12(2B)(a) (as added: see note 14 supra).

18 Ibid s 12(2B)(b) (as added: see note 14 supra).

19 In relation to a person serving with the police, 'contact' does not include contact that he has whilst acting in the execution of his duties: ibid s 12(2D) (as added: see note 14 supra).

20 Ibid s 12(2C)(a) (as added: see note 14 supra).

21 Ibid s 12(2C)(b) (as added: see note 14 supra).

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### **330. Direction and control matters.**

Nothing in the statutory provisions<sup>1</sup> relating to the handling of complaints, conduct matters or death or serious injury matters<sup>2</sup> has effect with respect to so much of any complaint as relates to the direction and control of a police force<sup>3</sup> by the chief officer of police<sup>4</sup> of that force<sup>5</sup>, or a person for the time being carrying out the functions of the chief officer of police of that force<sup>6</sup>.

The Secretary of State<sup>7</sup> may issue guidance to chief officers<sup>8</sup> and to police authorities<sup>9</sup> about the handling of so much of any complaint as relates to the direction and control of a police force by such a person as is mentioned above<sup>10</sup>. It is the duty of a chief officer and of a police authority when handling any complaint relating to such a matter to have regard to any guidance so issued<sup>11</sup>.

1 Ie in the Police Reform Act 2002 s 13, Sch 3 (as amended): see PARA 351 et seq post.

2 For the meanings of 'complaint', 'conduct matter' and 'death or serious injury matter' see PARA 329 ante.

3 For the meaning of 'police force' see PARA 102 note 11 ante.

4 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.



5 Police Reform Act 2002 s 14(1)(a).

6 Ibid s 14(1)(b).

7 As to the Secretary of State see PARA 107 note 15 ante.

8 For the meaning of 'chief officer' see PARA 316 note 6 ante.

9 For the meaning of 'police authority' see PARA 139 note 1 ante.

10 Police Reform Act 2002 s 14(2).

11 Ibid s 14(3). A requirement 'to have regard' to guidance means no more than that a person is required to take the guidance into account when exercising his functions and does not mean that he is obliged to comply with the guidance: *R v Police Complaints Board, ex p Madden, R v Police Complaints Board, ex p Rhone* [1983] 2 All ER 353, [1983] Crim LR 263.

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### **331. General duties of police authorities, chief officers and inspectors.**

It is the duty of:

- 163 (1) every police authority<sup>1</sup> maintaining a police force<sup>2</sup>;
- 164 (2) the chief officer of police<sup>3</sup> of every police force<sup>4</sup>; and
- 165 (3) every inspector of constabulary<sup>5</sup> carrying out any of his functions in relation to a police force<sup>6</sup>,

to ensure that it or he is kept informed, in relation to that force, about all the following matters<sup>7</sup>: (a) matters with respect to which any provision of Part 2 of the Police Reform Act 2002<sup>8</sup> has effect<sup>9</sup>; (b) anything which is done under or for the purposes of any such provision<sup>10</sup>; and (c) any obligations to act or refrain from acting that have arisen by or under any such provision but have not yet been complied with, or have been contravened<sup>11</sup>. It is the duty of the Serious Organised Crime Agency<sup>12</sup> to ensure that it is kept informed, in relation to the Agency, about all such matters<sup>13</sup>; and there is a similar duty on the National Policing Improvement Agency<sup>14</sup>.

Where:

- 166 (i) a police authority maintaining any police force requires the chief officer<sup>15</sup> of that force or of any other force to provide a member of his force for appointment<sup>16</sup> for the purpose of carrying out an investigation<sup>17</sup>;
- 167 (ii) the chief officer of police of any police force requires the chief officer of police of any other police force to provide a member of that other force for such appointment<sup>18</sup>; or
- 168 (iii) a police authority or chief officer requires the Director General of the Serious Organised Crime Agency to provide a member of the staff of that Agency for such appointment<sup>19</sup>,

it is the duty of the chief officer to whom the requirement is addressed or of the Director General to comply with it<sup>20</sup>.

It is the duty of every police authority maintaining a police force<sup>21</sup>, the chief officer of police of every police force<sup>22</sup>, and the Serious Organised Crime Agency<sup>23</sup>, to provide the Independent Police Complaints Commission<sup>24</sup> and every member of the Commission's staff with all such assistance as the Commission or that member of staff may reasonably require for the purposes of, or in connection with, the carrying out of any investigation<sup>25</sup> by the Commission<sup>26</sup>. It is also the duty of those persons to ensure that a person appointed<sup>27</sup> to carry out an investigation is given all such assistance and co-operation in the carrying out of that investigation as that person may reasonably require<sup>28</sup>. These duties imposed<sup>29</sup> on a police authority maintaining a police force, on the chief officer of such a force and on the Serious Organised Crime Agency have effect irrespective of whether the investigation relates to the conduct of a person who is or has been a member of that force or a member of the staff of the Agency<sup>30</sup>, and irrespective of who has the person appointed to carry out the investigation under his direction and control<sup>31</sup>.

Every police authority and chief officer must keep records, in such form as the Commission determines, of: (A) every complaint<sup>32</sup> and purported complaint that is made to it or him<sup>33</sup>; (B) every conduct matter recorded<sup>34</sup> by it or him<sup>35</sup>; (C) every DSI matter recorded<sup>36</sup> by it or him<sup>37</sup>; (D) every exercise of a power or performance of a duty under Part 2<sup>38</sup> of the Police Reform Act 2002<sup>39</sup>.

A chief officer may delegate all or any of the powers or duties conferred or imposed on him by or under Part 2<sup>40</sup> of the Police Reform Act 2002<sup>41</sup>: (aa) in the City of London police force, to an assistant City of London police commissioner or a commander of that force<sup>42</sup>; (bb) in the metropolitan police force, to an assistant metropolitan police commissioner, a deputy assistant metropolitan police commissioner or a commander of that force<sup>43</sup>; (cc) in any other police force, to a deputy chief constable or an assistant chief constable of that force<sup>44</sup>. However, a chief officer must not, in any particular case, delegate any power or duty to an officer who has acted as investigating officer in that case, or who has acted in relation to it in pursuance of an attempt to resolve it by way of local resolution<sup>45</sup>; and a chief officer may delegate all or any of his powers or duties in relation to the local resolution of complaints to any person serving with the police<sup>46</sup>.

1 For the meaning of 'police authority' see PARA 139 note 1 ante.

2 Police Reform Act 2002 s 15(1)(a). For the meaning of 'police force' see PARA 102 note 11 ante.

3 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

4 Police Reform Act 2002 s 15 (1)(b).

5 As to Her Majesty's Inspectors of Constabulary see PARA 206 ante.

6 Police Reform Act 2002 s 15(1)(c).

7 Ibid s 15(1).

8 Ie ibid Pt 2 (ss 9-29) (as amended).

9 Ibid s 15(2)(a).

10 Ibid s 15(2)(b).

11 Ibid s 15(2)(c).

12 As to the Serious Organised Crime Agency see PARA 430 et seq post.

13 Police Reform Act 2002 s 15(1A) (added by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 5(1), (2)).

14 See the Police Reform Act 2002 s 15(1B) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 80, 84(1), (2)). As to the National Policing Improvement Agency see PARA 223 ante.

- 15 For the meaning of 'chief officer' see PARA 316 note 6 ante.
- 16 Ie under the Police Reform Act 2002 s 13, Sch 3 para 16, 17 or 18 (as amended): see PARAS 370-372 post.
- 17 Ibid s 15(3)(a).
- 18 Ibid s 15(3)(b).
- 19 Ibid s 15(3)(c) (substituted by the Serious Organised Crime and Police Act 2005 Sch 2 paras 1, 5(1), (3) (a)).
- 20 Police Reform Act 2002 s 15(3) (amended by the Serious Organised Crime and Police Act 2005 Sch 2 paras 1, 5(1), (3)(b)).
- 21 Police Reform Act 2002 s 15(4)(a).
- 22 Ibid s 15(4)(b).
- 23 Ibid s 15(4)(c) (substituted by the Serious Organised Crime and Police Act 2005 Sch 2, PARAS 1, 5(1), (4)).
- 24 As to the Independent Police Complaints Commission see PARA 316 et seq ante.
- 25 Ie under the Police Reform Act 2002 Pt 2 (as amended).
- 26 Ibid s 15(4). As to investigations by the Commission see PARA 369 et seq post.
- 27 Ie under ibid s 13, Sch 3 para 16, 17 or 18 (as amended): see PARAS 370-372 post.
- 28 Ibid s 15(5) (amended by the Serious Organised Crime and Police Act 2005 Sch 2 paras 1, 5(1), (5)).
- 29 Ie the duties imposed by the Police Reform Act 2002 s 15(4), (5) (as amended): see the text to notes 21-28 supra.
- 30 Ibid s 15(6)(a) (amended by the Serious Organised Crime and Police Act 2005 Sch 2, PARAS 1, 5(1), (6)(a), (b)).
- 31 Police Reform Act 2002 s 15(6)(b). However, a chief officer of a third force may be required to give assistance and co-operation under s 15(5) (as amended) (see the text to notes 27-28 supra) only with the approval of the chief officer of the force to which the person who requires it belongs: s 15(6) (amended by the Serious Organised Crime and Police Act 2005 ss 55(1), 174(2), Sch 2 paras 1, 5(1), (6)(c), Sch 17 Pt 2). 'Third force', in relation to an investigation, means a police force other than:

- 4 (1) the force to which the person carrying out the investigation belongs (Police Reform Act 2002 s 15(7)(a)); or
- 5 (2) the force to which the person whose conduct is under investigation belonged at the time of the conduct (s 15(7)(b)),

and where the person whose conduct is under investigation was a member of the staff of the Serious Organised Crime Agency at the time of the conduct, 'third force' means any police force other than the force to which the person carrying out the investigation belongs (s 15(7) (substituted by the Serious Organised Crime and Police Act 2005 Sch 2, PARAS 1, 5(1), (7))). Where the person who requires assistance and co-operation under the Police Reform Act 2002 s 15(5) (as amended) is a member of the staff of the Serious Organised Crime Agency, a chief officer of a third force may be required to give that assistance and co-operation only with the approval of the Director General of the Agency: s 15(8) (s 15(8), (9) added by the Serious Organised Crime and Police Act 2005 Sch 2, PARAS 1, 5(1), (8)). Where the person carrying out an investigation is not a member of the staff of the Serious Organised Crime Agency and the person whose conduct is under investigation was not a member of the staff of the Agency at the time of the conduct, the Agency may be required to give assistance and co-operation under the Police Reform Act 2002 s 15(5) only with the approval of the relevant directing officer: s 15(9) (as so added; and amended by the Police and Justice Act 2006 Sch 1 paras 80, 84(1), (4)). 'The relevant directing officer', in a case where the person who requires assistance and co-operation belongs to a police force, means the chief officer of that force; and, in a case where the person who requires assistance and co-operation is a member of the staff of the National Policing Improvement Agency, means the chief executive of that Agency: Police Reform Act 2002 s 15(10) (added by the Police and Justice Act 2006 Sch 1 paras 80, 84(1), (5)). Where the person who requires assistance and co-operation under the Police Reform Act 2002 s 15(5) (as amended) is a member of the staff of the National Policing Improvement Agency, the chief officer of a third force or the police authority maintaining a third force may be required to give that assistance and co-operation only with the approval of the chief executive of that Agency: s 15(8A) (s 15(8A), (8B) added by the Police and Justice Act 2006 Sch 1 paras 80, 84(1), (3)). In the Police Reform Act 2002 s 15(8) (as amended) and s 15(8A)

(as added), 'third force', in relation to an investigation, means any police force other than the force to which the person whose conduct is under investigation belonged at the time of the conduct: s 15(8B) (as so added).

32 For the meaning of 'complaint' see PARA 329 ante.

33 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 24(a).

34 Ie under the Police Reform Act 2002 Sch 3 para 10(3): see PARA 361 post.

35 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 24(b).

36 Ie under the Police Reform Act 2002 Sch 3 para 14A (as added): see PARA 366 post. For the meaning of 'DSI matter' see PARA 329 ante.

37 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 24(ab) (added by SI 2006/1406).

38 See note 8 supra.

39 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 24(c).

40 See note 8 supra.

41 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 26(1). This provision is expressed to be subject to reg 26(3), (4): see the text to notes 45-46 infra.

42 Ibid reg 26(2)(a). As to the City of London police force see PARA 138 ante.

43 Ibid reg 26(2)(b). As to the metropolitan police force see PARA 137 ante. As to assistant metropolitan police commissioners, deputy assistant metropolitan police commissioners and commanders see PARA 186 ante.

44 Ibid reg 26(2)(c). As to deputy chief constables see PARA 180 ante; and as to assistant chief constables see PARA 181 ante.

45 Ibid reg 26(4). For the meaning of 'local resolution' see PARA 358 note 2 post.

46 Ibid reg 26(3). For the meaning of 'person serving with the police' see PARA 327 note 7 ante.

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### **332. Payment for assistance with investigations.**

The following provisions<sup>1</sup> apply where one police force<sup>2</sup> is required to provide assistance to another in connection with an investigation<sup>3</sup> or a police force is required to provide assistance in such a connection to the Independent Police Complaints Commission<sup>4</sup>.

Where the assistance is required to be provided by one police force to another, the police authority<sup>5</sup> maintaining that other police force must pay to the police authority maintaining the assisting force such contribution (if any) towards the costs of the assistance: (1) as may be agreed between them<sup>6</sup>; or (2) in the absence of an agreement, as may be determined in accordance with any arrangements which have been agreed to by police authorities generally<sup>7</sup> and are for the time being in force with respect to the making of contributions towards the costs of assistance provided, in connection with investigations, by one police force to another<sup>8</sup>; or (3) in the absence of any such arrangements, as may be determined by the Secretary of State<sup>9</sup>. Where the assistance is required to be provided by a police force to the Commission, the Commission must pay to the police authority maintaining the assisting force such contribution (if any) towards the costs of the assistance: (a) as may be agreed between the Commission and that authority<sup>10</sup>; or (b) in the absence of an agreement, as may be determined in accordance with any arrangements which have been agreed to by police authorities

generally and by the Commission<sup>11</sup> and are for the time being in force with respect to the making of contributions towards the costs of assistance provided, in connection with investigations, to the Commission<sup>12</sup>; or (c) in the absence of any such arrangements, as may be determined by the Secretary of State<sup>13</sup>.

These provisions also apply to the Serious Organised Crime Agency where it is required to provide assistance<sup>14</sup>.

1     le the Police Reform Act 2002 s 16 (as amended). Section 16 (as amended) is without prejudice to the application of the Police Act 1996 s 24 (assistance given voluntarily by one force to another: see PARA 231 ante) in a case in which assistance is provided, otherwise than in pursuance of any duty imposed by the Police Reform Act 2002 s 15 (as amended) (see PARA 331 ante), in connection with an investigation under Pt 2 (ss 9-29) (as amended): s 16(7).

2     For the meaning of 'police force' see PARA 102 note 11 ante.

3     Police Reform Act 2002 s 16(1)(a). The investigation referred to is an investigation under Pt 2 (as amended). For these purposes, assistance is required to be provided by one police force to another in connection with an investigation if the chief officer of the first force ('the assisting force') complies with a requirement under s 15(3) (as amended) or s 15(5) (as amended) (see PARA 331 ante) that is made in connection with: (1) an investigation relating to the conduct of a person who, at the time of the conduct, was a member of the other force (s 16(2)(a)(i) (s 16(2)(a)(i), (ii) substituted by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 5(1), (2))); or (2) an investigation of a DSI matter in relation to which the relevant officer was, at the time of the death or serious injury, a member of the other force (Police Reform Act 2002 s 16(2)(a)(ii) (as so substituted)). For the meaning of 'chief officer' see PARA 316 note 6 ante. For the meanings of 'conduct' and 'DSI matter' see PARA 329 ante. For the meaning of 'serious injury' see PARA 329 note 15 ante.

'The relevant officer', in relation to a DSI matter, means the person serving with the police: (a) who arrested the person who has died or suffered serious injury; (b) in whose custody that person was at the time of the death or serious injury; or (c) with whom that person had the contact in question; and where there is more than one such person it means the one who so dealt with him last before the death or serious injury occurred: s 29(1A) (s 29(1A), (1B) added by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 10(1), (3)). Where it cannot be determined which of two or more persons serving with the police dealt with a person last before a death or serious injury occurred, the relevant officer is the most senior of them: Police Reform Act 2002 s 29(1B) (as so added). For the meaning of 'person serving with the police' see PARA 327 note 7 ante.

4     Ibid s 16(1)(b). For these purposes, assistance is required to be provided in such a connection by a police force ('the assisting force') to the Independent Police Complaints Commission if the chief officer of that force complies with a requirement under s 15(4) (as amended) (see PARA 331 ante) that is made in connection with: (1) an investigation relating to the conduct of a person who, at the time of the conduct, was not a member of that force (s 16(2)(b)(i) (s 16(2)(b)(i), (ii) substituted by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 5(1), (3))); or (2) an investigation of a DSI matter in relation to which the relevant officer was, at the time of the death or serious injury, not a member of that force (Police Reform Act 2002 s 16(2)(b)(ii) (as so substituted)). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

5     For the meaning of 'police authority' see PARA 139 note 1 ante.

6     Police Reform Act 2002 s 16(3)(a).

7     Ibid s 16(3)(b)(i).

8     Ibid s 16(3)(b)(ii).

9     Ibid s 16(3)(c). As to the Secretary of State see PARA 107 note 15 ante.

10    Ibid s 16(4)(a).

11    Ibid s 16(4)(b)(i).

12    Ibid s 16(4)(b)(ii).

13    Ibid s 16(4)(c).

14    In ibid s 16 (as amended) (subject to s 16(6) (as substituted)), references to a police force and to a police authority maintaining a police force include references to the Serious Organised Crime Agency; and in relation

to that Agency, references to the chief officer are references to the Director General: s 16(5) (s 16(5), (6) substituted by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 6). The Police Reform Act 2002 s 16 (as amended) has effect in relation to cases in which assistance is required to be provided by the Agency as if: (1) the reference in s 16(3)(b) (see the text to notes 7-8 supra) to police authorities generally included a reference to the Agency (s 16(6)(a) (as so substituted)); and (2) the reference in s 16(4)(b) (see the text to notes 11-12 supra) to police authorities generally were a reference to the Agency (s 16(6)(b) (as so substituted)). As to the Serious Organised Crime Agency see PARA 430 et seq post.

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### **333. Investigations: National Policing Improvement Agency involvement.**

Where a police authority<sup>1</sup> or chief officer<sup>2</sup> requires the National Policing Improvement Agency<sup>3</sup> and its chief executive to provide a member of the Agency's staff who is a constable<sup>4</sup> for appointment<sup>5</sup> in respect of an investigation, it is the duty of the Agency and its chief executive to comply with the requirement<sup>6</sup>. It is the duty of the Agency and its chief executive to ensure that a person so appointed to carry out an investigation is given all such assistance and co-operation in the carrying out of that investigation as that person may reasonably require<sup>7</sup>.

It is the duty of the Agency and its chief executive to provide the Independent Police Complaints Commission<sup>8</sup> and every member of the Commission's staff with all such assistance as the Commission or that member of staff may reasonably require for the purposes of, or in connection with, the carrying out of any investigation<sup>9</sup> by the Commission<sup>10</sup>.

1 For the meaning of 'police authority' see PARA 139 note 1 ante.

2 For the meaning of 'chief officer' see PARA 316 note 6 ante.

3 As to the National Policing Improvement Agency see PARA 223 ante.

4 As to the office of constable see PARA 101 et seq ante.

5 I.e. under the Police Reform Act 2002 s 13, Sch 3 para 16, 17 or 18 (as amended): see PARAS 370-372 post.

6 Ibid s 16A(1) (s 16A added by the Police and Justice Act 2006 s 1, Sch 1 para 85). Where the National Policing Improvement Agency and its chief executive comply with a requirement under the Police Reform Act 2002 s 16A(1) or (2) (as added) that is made in connection with: (1) an investigation relating to the conduct of a person who, at the time of the conduct, was a member of a police force; or (2) an investigation of a DSI matter in relation to which the relevant officer was, at the time of the death or serious injury, a member of a police force (s 16A(6) (as so added)), the police authority maintaining the police force mentioned in head (1) or head (2) supra must pay to the Agency such contribution (if any) towards the costs of compliance with the requirement: (a) as may be agreed between them; or (b) in the absence of an agreement, as may be determined in accordance with any arrangements which have been agreed to by police authorities generally and by the Agency, and are for the time being in force with respect to the making of contributions towards the costs of compliance by the Agency and its chief executive with requirements of the kind mentioned in head (1) or head (2) supra; or (c) in the absence of any such arrangements, as may be determined by the Secretary of State (s 16A(7) (as so added)). For the meaning of 'conduct' see PARA 329 note 3 ante. For the meaning of 'police force' see PARA 102 note 11 ante. For the meaning of 'DSI matter' see PARA 329 ante. For the meaning of 'serious injury' see PARA 329 note 15 ante. For the meaning of 'relevant officer' see PARA 332 note 3 ante.

7 Ibid s 16A(2) (as added: see note 6 supra). As to payment of the costs of compliance with such requirement see note 6 supra. Where the person who requires assistance and co-operation under s 16A(2) (as added) is a person serving with the police, the National Policing Improvement Agency and its chief executive may be required to give that assistance and co-operation only with the approval of the chief officer of the force to which that person belongs: s 16A(4) (as so added). Where the person who requires assistance and co-operation under s 16A(2) (as added) is a member of the staff of the Serious Organised Crime Agency, the National Policing Improvement Agency and its chief executive may be required to give that assistance and co-

operation only with the approval of the Director General of the Serious Organised Crime Agency: s 16A(5) (as so added). For the meaning of 'person serving with the police' see PARA 327 note 7 ante. As to the Serious Organised Crime Agency see PARA 430 et seq post. As to the Director General of the Serious Organised Crime Agency see PARA 437 post.

8 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

9 le under the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended).

10 Ibid s 16A(3) (as added: see note 6 supra). Where the National Policing Improvement Agency and its chief executive comply with a requirement under s 16A(3) (as added), the Independent Police Complaints Commission must pay to the Agency such contribution (if any) towards the costs of compliance with the requirement: (1) as may be agreed between the Commission and the Agency; or (2) in the absence of an agreement, as may be determined in accordance with any arrangements which have been agreed to by the Agency and by the Commission, and are for the time being in force with respect to the making of contributions towards the costs of compliance by the Agency and its chief executive with requirements under s 16A(3) (as added); or (3) in the absence of any such arrangements, as may be determined by the Secretary of State: s 16A(8) (as so added).

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### **334. Provision of information to the Commission.**

It is the duty of every police authority<sup>1</sup>, and every chief officer<sup>2</sup>, at such times, in such circumstances and in accordance with such other requirements as may be set out in regulations made by the Secretary of State<sup>3</sup>, to provide the Independent Police Complaints Commission<sup>4</sup> with all such information and documents<sup>5</sup> as may be specified or described in regulations so made<sup>6</sup>. It is also the duty of every police authority and of every chief officer: (1) to provide the Commission with all such other information and documents specified or described in a notification given by the Commission to that authority or chief officer<sup>7</sup>; and (2) to produce or deliver up to the Commission all such evidence and other things so specified or described<sup>8</sup>, as appear to the Commission to be required by it for the purposes of the carrying out of any of its functions<sup>9</sup>.

Nothing in these provisions requires a police authority or chief officer: (a) to provide the Commission with any information or document, or to produce or deliver up any other thing, before the earliest time at which it is practicable for that authority or chief officer to do so<sup>10</sup>; or (b) to provide, produce or deliver up anything at all in a case in which it never becomes practicable for that authority or chief officer to do so<sup>11</sup>.

A requirement imposed by any regulations or notification<sup>12</sup> may authorise or require information or documents to which it relates to be provided to the Commission electronically<sup>13</sup>.

1 Police Reform Act 2002 s 17(1)(a). For the meaning of 'police authority' see PARA 139 note 1 ante. For these purposes, 'police authority' includes the National Policing Improvement Agency: s 17(6) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 80, 86). As to the National Policing Improvement Agency see PARA 223 ante.

2 Police Reform Act 2002 s 17(1)(b). For the meaning of 'chief officer' see PARA 316 note 6 ante. For these purposes, 'chief officer' includes the chief executive of the National Policing Improvement Agency: s 17(6) (as added: see note 1 supra).

3 As to the Secretary of State see PARA 107 note 15 ante. As to regulations generally see PARA 346 post. At the date at which this volume states the law no regulations had been made for these purposes.

4 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

5 'Information' includes estimates and projections, and statistical analyses; and 'document' means anything in which information of any description is recorded: Police Reform Act 2002 s 29(1).

6 Ibid s 17(1).

7 Ibid s 17(2)(a).

8 Ibid s 17(2)(b).

9 Ibid s 17(2). Anything falling to be provided, produced or delivered up by any person in pursuance of such a requirement must be provided, produced or delivered up in such form, in such manner and within such period as may be specified in: (1) the notification imposing the requirement (s 17(3)(a)); or (2) any subsequent notification given by the Commission to that person for these purposes (s 17(3)(b)). As to the Commission's functions see PARA 327 ante. For the meaning of 'person' see PARA 110 note 6 ante.

10 Ibid s 17(4)(a).

11 Ibid s 17(4)(b).

12 Ie under ibid s 17 (as amended).

13 Ibid s 17(5).

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### **335. Inspections of police premises on behalf of the Commission.**

Where the Independent Police Complaints Commission<sup>1</sup> requires a police authority<sup>2</sup> maintaining any police force<sup>3</sup>, or the chief officer of police<sup>4</sup> of any such force<sup>5</sup>, to allow a person nominated for the purpose by the Commission to have access to any premises occupied for the purposes of that force and to documents<sup>6</sup> and other things on those premises<sup>7</sup>, and the requirement is imposed for any of the specified purposes<sup>8</sup>, it is the duty of the authority or, as the case may be, of the chief officer to secure that the required access is allowed to the nominated person<sup>9</sup>. The specified purposes are:

169 (1) the purposes of any examination by the Commission of the efficiency and effectiveness of the arrangements made by the force in question for handling complaints<sup>10</sup> or dealing with recordable conduct matters<sup>11</sup> or DSI matters<sup>12</sup>;

170 (2) the purposes of any investigation by the Commission<sup>13</sup> or of any investigation carried out under its supervision or management<sup>14</sup>.

Where a requirement imposed<sup>15</sup> for the purposes mentioned in head (1) above requires access to any premises, document or thing to be allowed to any person<sup>16</sup>, but there are reasonable grounds for not allowing that person to have the required access at the time at which he seeks to have it<sup>17</sup>, the obligation to secure that the required access is allowed has effect as an obligation to secure that the access is allowed to that person at the earliest practicable time after there cease to be any such grounds as that person may specify<sup>18</sup>.

These provisions are in addition to, and without prejudice to: (a) the rights of entry, search and seizure that are or may be conferred on a person designated<sup>19</sup> for the purposes of an investigation<sup>20</sup>, or any person who otherwise acts on behalf of the Commission<sup>21</sup>, in his capacity as a constable<sup>22</sup> or as a person with the powers and privileges of a constable<sup>23</sup>; or (b) the statutory obligations<sup>24</sup> of police authorities and chief officers<sup>25</sup>.



- 1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.
- 2 For the meaning of 'police authority' see PARA 139 note 1 ante.
- 3 Police Reform Act 2002 s 18(1)(a)(i). For the meaning of 'police force' see PARA 102 note 11 ante.
- 4 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.
- 5 Police Reform Act 2002 s 18(1)(a)(ii).
- 6 For the meaning of 'document' see PARA 334 note 5 ante.
- 7 Police Reform Act 2002 s 18(1)(a).
- 8 Ibid s 18(1)(b).
- 9 Ibid s 18(1).
- 10 For the meaning of 'complaint' see PARA 329 ante.
- 11 For the meaning of 'recordable conduct matter' see PARA 362 note 19 post.
- 12 Police Reform Act 2002 s 18(2)(a) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 6). A requirement imposed under the Police Reform Act 2002 s 18 (as amended) for the purposes mentioned in s 18(2)(a) (as amended) must be notified to the authority or chief officer at least 48 hours before the time at which access is required: s 18(3). For the meaning of 'DSI matter' see PARA 329 ante. As to the giving of notification generally see PARA 344 post.
- 13 Ie under ibid Pt 2 (ss 9-29) (as amended).
- 14 Ibid s 18(2)(b). As to investigations see PARA 369 et seq post.
- 15 Ie under ibid s 18 (as amended).
- 16 Ibid s 18(4)(a).
- 17 Ibid s 18(4)(b).
- 18 Ibid s 18(4).
- 19 Ie for the purposes of ibid s 13, Sch 3 para 19: see PARA 374 post.
- 20 Ibid s 18(5)(a)(i).
- 21 Ibid s 18(5)(a)(ii).
- 22 As to the office of constable see PARA 101 et seq ante.
- 23 Police Reform Act 2002 s 18(5)(a).
- 24 Ie under ibid s 15 (as amended) (see PARA 331 ante) and s 17 (see PARA 334 ante).
- 25 Ibid s 18(5)(b).

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### **336. Use of investigatory powers by or on behalf of the Commission.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> make such provision as he thinks appropriate for the purpose of authorising, for the purposes of, or for purposes connected with, the carrying out of

the Independent Police Complaints Commission's functions<sup>3</sup>, the use of directed and intrusive surveillance<sup>4</sup>, and the conduct and use of covert human intelligence sources<sup>5</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 Such an order may, for the purposes of or in connection with any such provision as is mentioned in the Police Reform Act 2002 s 19(1), provide for the Regulation of Investigatory Powers Act 2000 Pt 2 (ss 26-48) (as amended), Pt 4 (ss 57-72) (as amended) (surveillance and covert human intelligence sources and scrutiny of investigatory powers: see PARA 489 et seq post) and the Police Act 1997 Pt 3 (ss 91-108) (as amended) (authorisations in respect of property: see PARA 483 et seq post), to have effect with such modifications as may be specified in the order: Police Reform Act 2002 s 19(2). The Secretary of State must not make an order containing (with or without any other provision) any provision authorised by s 19 unless a draft of that order has been laid before Parliament and approved by a resolution of each House: s 19(3). As to the making of orders generally see PARA 346 post. As to the order that has been made see the Independent Police Complaints Commission (Investigatory Powers) Order 2004, SI 2004/815.

3 Police Reform Act 2002 s 19(1). As to the Independent Police Complaints Commission see PARA 316 ante; and as to the Commission's functions see PARA 327 ante.

4 Ibid s 19(1)(a). For the meanings of 'directed' and 'intrusive' surveillance see PARA 489 post.

5 Ibid s 19(1)(b). For the meaning of 'covert human intelligence source' see PARA 489 post.

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### **337. Duty to keep the complainant informed.**

In any case in which a complaint is investigated<sup>1</sup> by the Independent Police Complaints Commission<sup>2</sup>, or under its management<sup>3</sup>, it is the duty of the Commission to provide the complainant<sup>4</sup> with all such information<sup>5</sup> as will keep him properly informed, while the investigation is being carried out and subsequently, of all the following matters<sup>6</sup>: (1) the progress of the investigation<sup>7</sup>; (2) any provisional findings of the person carrying out the investigation<sup>8</sup>; (3) whether any report has been submitted<sup>9</sup> on completion of the investigation<sup>10</sup>; (4) the action (if any) that is taken in respect of the matters dealt with in any such report<sup>11</sup>; and (5) the outcome of any such action<sup>12</sup>.

In any case in which there is an investigation of a complaint<sup>13</sup> by the appropriate authority<sup>14</sup> on its own behalf<sup>15</sup>, or under the supervision of the Commission<sup>16</sup>, it is the duty of the appropriate authority to provide the complainant with all such information as will keep him properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in heads (1) to (5) above<sup>17</sup>.

The duties imposed by these provisions on the Commission and the appropriate authority in relation to any complaint must be performed in such manner, and have effect subject to such exceptions<sup>18</sup>, as may be provided for by regulations<sup>19</sup> made by the Secretary of State<sup>20</sup>.

It is the duty of a person appointed to carry out an investigation<sup>21</sup> to provide the Commission or, as the case may be, the appropriate authority with all such information as the Commission or that authority may reasonably require for the purpose of performing these duties<sup>22</sup>.

1 In accordance with the provisions of the Police Reform Act 2002 s 13, Sch 3 (as amended): see PARA 369 et seq post. For the meaning of 'complaint' see PARA 329 ante.

2 Ibid s 20(1)(a). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

3 Ibid s 20(1)(b).

4 References, in relation to anything which is or purports to be a complaint, to the 'complainant' are: (1) except in the case of anything which is or purports to be a complaint falling within ibid s 12(1)(d) (see PARA 329 ante), references to the person by whom the complaint or purported complaint was made; and (2) in that case, references to the person on whose behalf the complaint or purported complaint was made; but where any person is acting on another's behalf for the purposes of any complaint or purported complaint, anything that is to be or may be done under Pt 2 (ss 9-29) (as amended) by or in relation to the complainant may be done, instead, by or in relation to the person acting on the complainant's behalf: s 29(1), (2).

5 For the meaning of 'information' see PARA 334 note 5 ante.

6 Police Reform Act 2002 s 20(1).

7 Ibid s 20(4)(a).

8 Ibid s 20(4)(b).

9 Ie under ibid Sch 3 para 22: see PARA 384 post.

10 Ibid s 20(4)(c).

11 Ibid s 20(4)(d).

12 Ibid s 20(4)(e).

13 Ie in accordance with the provisions of ibid Sch 3 (as amended): see PARA 369 et seq post.

14 'The appropriate authority': (1) in relation to a person serving with the police or in relation to any complaint, conduct matter or investigation relating to the conduct of such a person, means: (a) if that person is a senior officer, the police authority for the area of the police force of which he is a member; and (b) if he is not a senior officer, the chief officer under whose direction and control he is; and (2) in relation to a death or serious injury matter, means: (a) if the relevant officer is a senior officer, the police authority for the area of the police force of which he is a member; and (b) if he is not a senior officer, the chief officer under whose direction and control he is: ibid s 29(1) (definition substituted by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 10(1), (2)(a)).

'Senior officer' means a member of a police force holding a rank above that of chief superintendent: Police Reform Act 2002 s 29(1). As to ranks see PARA 230 ante. For the meaning of 'person serving with the police' see PARA 327 note 7 ante. For the meanings of 'conduct matter' and 'death or serious injury matter' see PARA 329 ante. For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'police force' see PARA 102 note 11 ante. For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

15 Ibid s 20(2)(a). See note 16 infra.

16 Ibid s 20(2)(b). References to the investigation of any complaint or matter by the appropriate authority on its own behalf, under the supervision of the Commission, under the management of the Commission or by the Commission itself are to be construed as references to its investigation in accordance with Sch 3 para 16, 17, 18 or 19 (as amended) (see PARAS 370-374 post): s 29(6).

17 Ibid s 20(2). Where s 20(2) applies, it is the duty of the Commission to give the appropriate authority all such directions as it considers appropriate for securing that that authority complies with its duty under that provision; and it is the duty of the appropriate authority to comply with any such direction: s 20(3).

18 The Secretary of State must not by regulations provide for any exceptions from the duties imposed by ibid s 20 except so far as he considers it necessary to do so for the purpose of: (1) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings (s 20(6)(a)); (2) preventing the disclosure of information in any circumstances in which it has been determined in accordance with the regulations that its non-disclosure: (a) is in the interests of national security (s 20(6)(b)(i)); (b) is for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders (s 20(6)(b)(ii)); (c) is required on proportionality grounds (s 20(6)(b)(iii)); or (d) is otherwise necessary in the public interest (s 20(6)(b)(iv)). The non-disclosure of information is required on proportionality grounds if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure: s 20(7). As to the Secretary of State see PARA 107 note 15 ante. As to the provision made by regulations as to such exceptions see the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 12; and PARA 339 post.

19 Such regulations may include provision framed by reference to the opinion of, or a determination by, the Commission or any police authority or chief officer: Police Reform Act 2002 s 20(8). As to regulations generally see PARA 346 post.

20 Ibid s 20(5). As to the manner in which the duty to provide information is to be performed see the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 11; and PARA 339 post.

21 Ie under the Police Reform Act 2002 Pt 2 (as amended).

22 Ibid s 20(9).

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### **338. Duty to provide information to other persons.**

A person (known as an 'interested person')<sup>1</sup> has an interest in being kept properly informed about the handling of a complaint<sup>2</sup>, recordable conduct matter<sup>3</sup> or DSI matter<sup>4</sup> if it appears to the Independent Police Complaints Commission<sup>5</sup> or to an appropriate authority<sup>6</sup> that he is a specified person<sup>7</sup>, and he has indicated that he consents to the provision of information to him in accordance with these provisions and that consent has not been withdrawn<sup>8</sup>.

A person is a specified person if:

171 (1) in the case of a complaint or recordable conduct matter:

17

30. (a) he is a relative<sup>9</sup> of a person whose death is the alleged result from the conduct<sup>10</sup> complained of or to which the recordable conduct matter relates<sup>11</sup>;

31. (b) he is a relative of a person whose serious injury<sup>12</sup> is the alleged result from that conduct and that person is incapable of making a complaint<sup>13</sup>;

32. (c) he himself has suffered serious injury as the alleged result of that conduct<sup>14</sup>;

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172 (2) in the case of a DSI matter:

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33. (a) he is a relative of the person who has died<sup>15</sup>;

34. (b) he is a relative of the person who has suffered serious injury and that person is incapable of making a complaint<sup>16</sup>;

35. (c) he himself is the person who has suffered serious injury<sup>17</sup>.

20

A person who does not fall within head (1) or head (2) above is an interested person if: (i) the Commission or an appropriate authority considers that he has an interest in the handling of the complaint, conduct matter or DSI matter which is sufficient to make it appropriate for information to be provided to him<sup>18</sup>; and (ii) he has indicated that he consents to the provision of information to him<sup>19</sup>.

In any case in which there is an investigation<sup>20</sup> of the complaint, recordable conduct matter or DSI matter<sup>21</sup> by the Commission<sup>22</sup>, or under its management<sup>23</sup>, it is the duty of the Commission to provide the interested person with all such information as will keep him properly informed, while the investigation is being carried out and subsequently, of all the following matters<sup>24</sup>: (A) the progress of the investigation<sup>25</sup>; (B) any provisional findings of the person carrying out the investigation<sup>26</sup>; (C) whether the Commission or the appropriate authority has made<sup>27</sup> a determination<sup>28</sup>; (D) whether any report has been submitted<sup>29</sup> on completion of the

investigation<sup>30</sup>; (E) the action (if any) that is taken in respect of the matters dealt with in any such report<sup>31</sup>; and (F) the outcome of any such action<sup>32</sup>.

In any case in which there is an investigation of the complaint, recordable conduct matter or DSI matter by the appropriate authority on its own behalf<sup>33</sup>, or under the supervision of the Commission<sup>34</sup>, it is the duty of the appropriate authority to provide the interested person with all such information as will keep him properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in heads (A) to (F) above<sup>35</sup>. These duties must be performed by the Commission and the appropriate authority in such manner, and have effect subject to such exceptions, as may be provided for by regulations made by the Secretary of State<sup>36</sup>.

1 See the Police Reform Act 2002 s 21(5) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 7(1), (7)).

2 For the meaning of 'complaint' see PARA 329 ante.

3 For the meaning of 'recordable conduct matter' see PARA 362 note 19 post.

4 For the meaning of 'DSI matter' see PARA 329 ante.

5 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

6 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

7 Police Reform Act 2002 s 21(1)(a) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 7(1), (3)).

8 Police Reform Act 2002 s 21(1)(b). For the meaning of 'information' see PARA 334 note 5 ante. In relation to a complaint, s 21 (as amended) confers no rights on the complainant: s 21(4). For the meaning of 'complainant' see PARA 337 note 4 ante. As to the provision of information to a complainant see PARA 337 ante.

9 'Relative' means any spouse, partner, parent or adult child: see *ibid* s 21(12); and the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 13.

10 For the meaning of 'conduct' see PARA 329 note 3 ante.

11 Police Reform Act 2002 s 21(2)(a) (s 21(2) amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 7(1), (4)).

12 For the meaning of 'serious injury' see PARA 329 note 15 ante.

13 Police Reform Act 2002 s 21(2)(b) (as amended: see note 11 *supra*).

14 *Ibid* s 21(2)(c) (as amended: see note 11 *supra*).

15 *Ibid* s 21(2A)(a) (s 21(2A) added by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 7(1), (5)).

16 Police Reform Act 2002 s 21(2A)(b) (as added: see note 15 *supra*).

17 *Ibid* s 21(2A)(c) (as added: see note 15 *supra*).

18 *Ibid* s 21(3)(a) (amended by the Serious Organised Crime and Police Act 2005 Sch 12, PARAS 1, 7(1), (6) (a), (b)).

19 Police Reform Act 2002 s 21(3)(b).

20 For the meaning of 'investigation' see PARA 337 note 16 ante.

21 *Ie* in accordance with the provisions of the Police Reform Act 2002 s 13, Sch 3: see PARA 369 et seq post.

22 *Ibid* s 21(6)(a).

23 *Ibid* s 21(6)(b).

- 24 Ibid s 21(6) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 7(1), (8)).
- 25 Police Reform Act 2002 s 21(9)(a).
- 26 Ibid s 21(9)(b).
- 27 Ie under ibid Sch 3 para 21A (as added): see PARA 383 post.
- 28 Ibid s 21(9)(ba) (added by the Serious Organised Crime and Police Act 2005 Sch 12, PARAS 1, 7(1), (9)).
- 29 Ie under the Police Reform Act 2002 Sch 3 para 22 (see PARA 384 post) or Sch 3 para 24A (as added) (see PARA 387 post).
- 30 Ibid s 21(9)(c) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 7(1), (10)).
- 31 Police Reform Act 2002 s 21(9)(d).
- 32 Ibid s 21(9)(e).
- 33 Ibid s 21(7)(a).
- 34 Ibid s 21(7)(b).
- 35 Ibid s 21(7) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 7(1), (8)). Where the Police Reform Act 2002 s 21(7) (as amended) applies, it is the duty of the Commission to give the appropriate authority all such directions as it considers appropriate for securing that that authority complies with its duty under that provision; and it is the duty of the appropriate authority to comply with any such direction: s 21(8).
- 36 See ibid s 21(10) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 7(1), (11)). The provisions of the Police Reform Act 2002 s 20(6)-(9) (see PARA 337 ante) apply for the purposes of s 21 (as amended) as they apply for the purposes of s 20: s 21(11). As to such regulations see the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, regs 11, 12; and PARA 339 post. As to the Secretary of State see PARA 107 note 15 ante. As to the making of regulations see PARA 346 post.

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### **339. Manner in which duties to provide information are to be performed.**

The Independent Police Complaints Commission<sup>1</sup> or, as the case may be, an appropriate authority<sup>2</sup> must perform the duties imposed on it<sup>3</sup> to keep the complainant<sup>4</sup> and other persons informed in the following manner<sup>5</sup>.

The Commission, in a case<sup>6</sup> relating to the investigation<sup>7</sup> of a complaint, conduct matter or DSI matter<sup>8</sup> by it or under its management, and an appropriate authority, in a case<sup>9</sup> relating to the investigation of a complaint, conduct matter or DSI matter by it, must inform the complainant or the interested party (as the case may be)<sup>10</sup>:

- 173 (1) of the progress of the investigation promptly and in any event:
  - 21 36. (a) if there has been no previous notification, within four weeks of the start of the investigation<sup>11</sup>; and
  37. (b) in any other case, within four weeks of the previous notification<sup>12</sup>;
- 22 174 (2) of any provisional findings of the person carrying out the investigation as frequently as the Commission or, as the case may be, the appropriate authority

determines to be appropriate in order for the complainant to be kept properly informed<sup>13</sup>.

When an investigation has been completed, each complainant and interested person must be notified of the date on which the final report<sup>14</sup> is likely to be submitted<sup>15</sup> and of the date on which the notification<sup>16</sup> of determination is likely to be given<sup>17</sup>.

In performing the duties<sup>18</sup> to keep the complainant and other persons informed, the Commission or, as the case may be, the appropriate authority must determine whether it is appropriate to offer, or to accede to a request for, a meeting with a complainant or, as the case may be, an interested person<sup>19</sup>. As soon as practicable after any such meeting the Commission or, as the case may be, the appropriate authority must send to the complainant or interested person a written record of the meeting and an account of how any concerns of that person will be addressed<sup>20</sup>.

As soon as practicable after any misconduct hearing or other action that is taken in respect of the matters dealt with in any final report<sup>21</sup>, the Commission or, as the case may be, an appropriate authority must notify any complainant and interested person of the outcome of that hearing or action, including the fact and outcome of any appeal against the findings of or sanctions imposed by such a hearing<sup>22</sup>.

The duties to keep the complainant and other persons informed<sup>23</sup> do not apply in circumstances where, in the opinion of the Commission or, as the case may be, of the appropriate authority, the non-disclosure of information is necessary<sup>24</sup> for the purpose of: (i) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings<sup>25</sup>; (ii) preventing the disclosure of information in any circumstances in which its non-disclosure: (A) is in the interests of national security<sup>26</sup>; (B) is for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders<sup>27</sup>; (C) is required on proportionality grounds<sup>28</sup>; or (D) is otherwise necessary in the public interest<sup>29</sup>. However, the Commission or, as the case may be, the appropriate authority may not conclude that the non-disclosure of information is necessary unless it is satisfied that there is a real risk of the disclosure of that information causing an adverse effect<sup>30</sup> and that adverse effect would be significant<sup>31</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

3 Ie by the Police Reform Act 2002 ss 20, 21 (as amended): see PARAS 337-338 ante.

4 For the meaning of 'complainant' see PARA 337 note 4 ante.

5 See the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 11(1). Subject to reg 11(5) (see the text to notes 18-19 infra) and reg 11(9), any notification under reg 11 (as amended) must be made in writing: reg 11(8). However, if the Commission or, as the case may be, the appropriate authority considers that an investigation has made minimal or no progress since the previous notification, then the next notification may be made by any means that, in the opinion of the Commission or, as the case may be, the appropriate authority, is suitable: reg 11(9). For the meaning of 'writing' see PARA 115 note 9 ante.

6 Ie a case falling within the Police Reform Act 2002 s 20(1) (see PARA 337 ante) or s 21(6) (see PARA 338 ante).

7 For the meaning of 'investigation' see PARA 337 note 16 ante.

8 For the meanings of 'complaint', 'conduct matter' and 'DSI matter' see PARA 329 ante.

9 Ie a case falling within the Police Reform Act 2002 s 20(2) (see PARA 337 ante) or s 21(7) (as amended) (see PARA 338 ante).

- 10 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 11(2), (3) (amended by SI 2006/1406). For the meaning of 'interested party' see PARA 338 ante.
- 11 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 11(2)(a)(i), (3)(a)(i).
- 12 Ibid reg 11(2)(a)(ii), (3)(a)(ii).
- 13 Ibid reg 11(2)(b), (3)(b).
- 14 Ie under the Police Reform Act 2002 Sch 3 para 22: see PARA 384 post.
- 15 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 11(4)(a).
- 16 Ie under the Police Reform Act 2002 Sch 3 para 23(9) or 24(7): see PARAS 385-386 post.
- 17 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 11(4)(b).
- 18 Ie the duties imposed by the Police Reform Act 2002 s 20(1), (2) (see PARA 337 ante), s 21(6), (7) (see PARA 338 ante), Sch 3 paras 23(9), 24(7) (see PARAS 385-386 post).
- 19 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 11(5).
- 20 Ibid reg 11(6).
- 21 Ie submitted under the Police Reform Act 2002 Sch 3 para 22: see PARA 384 post.
- 22 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 11(7). As to regulations governing the conduct of police officers see PARA 245 et seq ante.
- 23 Ie the duties imposed by the Police Reform Act 2002 s 20(1), (2) (see PARA 337 ante), s 21(6), (7) (see PARA 338 ante), Sch 3 paras 23(9), 24(7) (see PARAS 385-386 post).
- 24 Without prejudice to the generality of the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 12(1), the Commission or, as the case may be, the appropriate authority must consider whether the non-disclosure of information is justified under that provision in circumstances where: (1) that information is relevant to, or may be used in, any actual or prospective disciplinary proceedings (reg 12(3)(a)); (2) the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings (reg 12(3)(b)); (3) the disclosure of that information may prejudice the welfare or safety of any third party (reg 12(3)(c)); (4) that information constitutes criminal intelligence (reg 12(3)(d)).
- 25 Ibid reg 12(1)(a).
- 26 Ibid reg 12(1)(b)(i).
- 27 Ibid reg 12(1)(b)(ii).
- 28 Ibid reg 12(1)(b)(iii). The non-disclosure of information is required on proportionality grounds if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure: Police Reform Act 2002 s 20(7).
- 29 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 12(1)(b)(iv).
- 30 Ibid reg 12(2)(a).
- 31 Ibid reg 12(2)(b).

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### **340. Suspension of investigation or other procedure.**



The Independent Police Complaints Commission<sup>1</sup> may suspend any investigation or other procedure<sup>2</sup> which would, if it were to continue, prejudice any criminal proceedings<sup>3</sup>. An appropriate authority<sup>4</sup> may suspend any investigation or other procedure<sup>5</sup> which would, if it were to continue, prejudice any criminal investigation or proceedings<sup>6</sup>.

Where the whole or part of the investigation of a complaint<sup>7</sup> has been suspended until the conclusion of criminal proceedings, and the complainant<sup>8</sup> has failed to indicate after the conclusion of those proceedings that he wishes the investigation to start or be resumed, the Commission or (as the case may be) the appropriate authority must take<sup>9</sup> all reasonable steps to contact the complainant to ascertain whether he wants the investigation to start or be resumed<sup>10</sup>. If the complainant indicates that he does wish the investigation to start or be resumed, the Commission or appropriate authority must start or resume the investigation<sup>11</sup>. If the complainant indicates that he does not want the investigation to start or be resumed, or if he fails to reply within 21 days to a letter sent to him by the Commission or appropriate authority, the Commission or appropriate authority (as the case may be) must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter<sup>12</sup>. The Commission or appropriate authority must notify the person complained against<sup>13</sup> of its determination<sup>14</sup>; but the Commission or appropriate authority is not required to make a notification if it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest<sup>15</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 Ie under the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended).

3 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 16(1).

4 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

5 Ie under the Police Reform Act 2002 Pt 2 (as amended).

6 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 16(2). However, the Independent Police Complaints Commission may direct that any such investigation or other procedure which is liable to be suspended under reg 16(2) must continue if it is of the view that it is in the public interest to make such a direction: reg 16(3). The Commission must consult the appropriate authority before making such a direction: reg 16(4).

7 For the meaning of 'complaint' see PARA 329 ante.

8 For the meaning of 'complainant' see PARA 337 note 4 ante.

9 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 17(1).

10 Ibid reg 17(2).

11 Ibid reg 17(3).

12 Ibid reg 17(4). If the Commission or appropriate authority determines that it is not in the public interest for the complaint to be treated as a recordable conduct matter, the provisions of the Police Reform Act 2002 Pt 2 (as amended) cease to apply to the complaint: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 17(5). If the Commission or appropriate authority determines that it is in the public interest for the complaint to be treated as a recordable conduct matter, the provisions of the Police Reform Act 2002 Sch 3 paras 10-14 (see PARA 361 et seq post) apply to the matter: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 17(6). For the meaning of 'recordable conduct matter' see PARA 362 note 19 post.

13 'Person complained against', in relation to a complaint, means the person whose conduct is the subject-matter of the complaint: Police Reform Act 2002 s 29(1). For the meaning of 'conduct' see PARA 329 note 3 ante.

14 See the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 17(7). The Commission or appropriate authority must notify the person complained against if reg 17(5) or (6) (see note 12 supra) applies: reg 17(7).

15 Ibid reg 17(8).

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### **341. Complaints against a person who has subsequently ceased to serve with the police.**

Where a complaint or conduct matter<sup>1</sup> relates to the conduct<sup>2</sup> of a person who has ceased to be a person serving with the police<sup>3</sup> since the time of the conduct, then the Police Reform Act 2002<sup>4</sup> applies in relation to such a person as if it did not include any requirement for an appropriate authority<sup>5</sup> to determine whether disciplinary proceedings<sup>6</sup> should be brought against a person whose conduct is the subject-matter of a report<sup>7</sup>.

1 For the meanings of 'complaint' and 'conduct matter' see PARA 329 ante.

2 For the meaning of 'conduct' see PARA 329 note 3 ante.

3 For the meaning of 'person serving with the police' see PARA 327 note 7 ante.

4 Ie the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended).

5 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

6 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

7 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 21.

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### **342. Complaints against a person whose identity is unascertained.**

Where a complaint or conduct matter<sup>1</sup> relates to the conduct<sup>2</sup> of a person whose identity is unascertained at the time at which the complaint is made or the conduct matter is recorded, or whose identity is not ascertained during or subsequent to, the investigation of the complaint or recordable conduct matter<sup>3</sup>, then the statutory provisions relating to complaints<sup>4</sup> apply in relation to such a person as if they did not include: (1) any requirement for the person complained against<sup>5</sup> to be given a notification or an opportunity to make representations<sup>6</sup>; (2) any requirement for the Independent Police Complaints Commission<sup>7</sup> or the appropriate authority<sup>8</sup> to determine whether a criminal offence may have been committed by the person whose conduct has been the subject-matter of an investigation, or to take any action in relation to such a determination<sup>9</sup>; (3) any requirement for an appropriate authority to determine whether disciplinary proceedings<sup>10</sup> should be brought against a person whose conduct is the subject-matter of a report<sup>11</sup>.

Where the identity of such a person is subsequently ascertained, the Commission and appropriate authority must take such action in accordance with the statutory provisions relating to complaints as they see fit, regardless of any previous action<sup>12</sup> taken<sup>13</sup>.

- 1 For the meanings of 'complaint' and 'conduct matter' see PARA 329 ante.
- 2 For the meaning of 'conduct' see PARA 329 note 3 ante.
- 3 For the meaning of 'recordable conduct matter' see PARA 362 note 19 post.
- 4 Ie the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended) and the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643.
- 5 For the meaning of 'person complained against' see PARA 340 note 13 ante.
- 6 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 22(1)(a).
- 7 As to the Independent Police Complaints Commission see PARA 316 et seq ante.
- 8 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.
- 9 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 22(1)(b).
- 10 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.
- 11 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 22(1)(c).
- 12 Ie previous action taken under the Police Reform Act 2002 Pt 2 (as amended), as modified by heads (1)-(3) in the text.
- 13 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 22(2).

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### **343. Register to be kept by the Commission.**

The Independent Police Complaints Commission<sup>1</sup> must establish and maintain a register of all information supplied to it<sup>2</sup> by a police authority<sup>3</sup> or chief officer<sup>4</sup>. The Commission may publish or otherwise disclose to any person<sup>5</sup> any information held on the register provided that the publication or disclosure is necessary for or conducive to the purpose of: (1) learning lessons from the handling of, or demonstrating the thoroughness and effectiveness of local resolutions<sup>6</sup>, of investigations by the Commission, or of managed or supervised investigations<sup>7</sup>; (2) raising public awareness of the complaints system<sup>8</sup>; or (3) improving the complaints system<sup>9</sup>. However, information may not be published or disclosed in circumstances where in the opinion of the Commission the non-disclosure of information is necessary for the purposes<sup>10</sup> of preventing the premature or inappropriate disclosure of information<sup>11</sup>.

- 1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.
- 2 Ie under the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended).
- 3 For the meaning of 'police authority' see PARA 139 note 1 ante.
- 4 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 25(1). For the meaning of 'chief officer' see PARA 316 note 6 ante.
- 5 For the meaning of 'person' see PARA 110 note 6 ante.
- 6 For the meaning of 'local resolution' see PARA 358 note 2 post.

- 7 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 25(2)(a). As to investigations see PARA 369 et seq post.
- 8 Ibid reg 25(2)(b).
- 9 Ibid reg 25(2)(c).
- 10 Ie the purposes mentioned in ibid reg 12(1)(a), (b): see PARA 339 ante.
- 11 Ibid reg 25(3).

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### **344. Manner and time limits of notifications.**

Any notification to be given under the Police (Complaints and Misconduct) Regulations 2004<sup>1</sup> must, unless otherwise specified in the regulations or determined in guidance issued by the Independent Police Complaints Commission<sup>2</sup>, be given in writing<sup>3</sup> and, unless otherwise specified in the regulations, be made within such period as the Commission may determine in guidance<sup>4</sup>. No time limit mentioned in the regulations or determined by the Commission applies in any case where exceptional circumstances prevent that time limit being complied with<sup>5</sup>.

- 1 Ie the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643.
- 2 As to the Independent Police Complaints Commission see PARA 316 et seq ante. As to the power of the Commission to issue guidance see PARA 345 post.
- 3 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 27(1)(a). For the meaning of 'writing' see PARA 115 note 9 ante.
- 4 Ibid reg 27(1)(b).
- 5 Ibid reg 27(2).

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### **345. Power of the Commission to issue guidance.**

The Independent Police Complaints Commission<sup>1</sup> may, with the approval of the Secretary of State<sup>2</sup>, issue guidance to police authorities<sup>3</sup>, to chief officers<sup>4</sup>, and to persons who are serving with the police<sup>5</sup> otherwise than as chief officers<sup>6</sup>, concerning the exercise or performance, by the persons to whom the guidance is issued, of any of the following powers or duties<sup>7</sup>: (1) those that are conferred or imposed by or under the Police Reform Act 2002<sup>8</sup>; and (2) those that are otherwise conferred or imposed but relate to the handling of complaints<sup>9</sup>, the means by which recordable conduct matters<sup>10</sup> or DSI matters<sup>11</sup> are dealt with<sup>12</sup>, or the detection or deterrence of misconduct by persons serving with the police<sup>13</sup>.

The guidance that may be so issued includes<sup>14</sup>:

- 175 (a) guidance about the handling of complaints which have not yet been recorded and about dealing with recordable conduct matters or DSI matters that have not been recorded<sup>15</sup>;
- 176 (b) guidance about the procedure to be followed by the appropriate authority<sup>16</sup> when recording a complaint or any recordable conduct matter or DSI matter<sup>17</sup>;
- 177 (c) guidance about how to decide whether a complaint is suitable for being subjected to local resolution<sup>18</sup> and about the information<sup>19</sup> to be provided to a person before his consent to such resolution is given<sup>20</sup>;
- 178 (d) guidance about how to protect the scene of an incident or alleged incident which is or may become the subject-matter of a complaint<sup>21</sup> or is or may involve a recordable conduct matter or DSI matter<sup>22</sup>;
- 179 (e) guidance about the circumstances in which it is appropriate (where it is lawful to do so) to disclose to any person<sup>23</sup>, or to publish, any information about an investigation of a complaint, conduct matter or DSI matter<sup>24</sup>, or to provide any person with, or to publish, any report or other document relating to such an investigation<sup>25</sup>;
- 180 (f) guidance about the matters to be included in a memorandum<sup>26</sup> and about the manner in which, and the place at which, such a memorandum is to be delivered to the Commission<sup>27</sup>.

Before issuing any such guidance, the Commission must consult with the Association of Police Authorities<sup>28</sup>, the Association of Chief Police Officers<sup>29</sup>, and such other persons as it thinks fit<sup>30</sup>.

Nothing in these provisions authorises the issuing of any guidance about a particular case<sup>31</sup>.

It is the duty of every person to whom any guidance is issued to have regard to that guidance in exercising or performing the powers and duties to which the guidance relates<sup>32</sup>. A failure by a person to whom guidance is issued to have regard to the guidance is admissible in evidence in any disciplinary proceedings<sup>33</sup> or on any appeal from a decision taken in any such proceedings<sup>34</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 See the Police Reform Act 2002 s 22(4). As to the Secretary of State see PARA 107 note 15 ante.

3 Ibid s 22(1)(a). For the meaning of 'police authority' see PARA 139 note 1 ante.

4 Ibid s 22(1)(b). For the meaning of 'chief officer' see PARA 316 note 6 ante.

5 For the meaning of 'person serving with the police' see PARA 327 note 7 ante.

6 Police Reform Act 2002 s 22(1)(c).

7 Ibid s 22(1).

8 Ibid s 22(2)(a). The provisions of the Police Reform Act 2002 specified in this provision are those of Pt 2 (ss 9-29) (as amended).

9 Ibid s 22(2)(b)(i). For the meaning of 'complaint' see PARA 329 ante.

10 For the meaning of 'recordable conduct matter' see PARA 362 note 19 post.

11 For the meaning of 'DSI matter' see PARA 329 ante.

12 Police Reform Act 2002 s 22(2)(b)(ii) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 8(1), (2)).

13 Police Reform Act 2002 s 22(2)(b)(iii).

- 14 Ibid s 22(5). This provision is expressed to be without prejudice to the generality of s 22(1)-(4) (as amended): see the text to notes 1-13 supra, 28-30 infra).
- 15 Ibid s 22(5)(a) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 8(1), (3) (a)).
- 16 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.
- 17 Police Reform Act 2002 s 22(5)(b) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 8(1), (3)(b)).
- 18 Police Reform Act 2002 s 22(5)(c)(i). For the meaning of 'local resolution' see PARA 358 note 2 post.
- 19 For the meaning of 'information' see PARA 334 note 5 ante.
- 20 Police Reform Act 2002 s 22(5)(c)(ii).
- 21 Ibid s 22(5)(d)(i).
- 22 Ibid s 22(5)(d)(ii) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 8(1), (3) (b)).
- 23 For the meaning of 'person' see PARA 110 note 6 ante.
- 24 Police Reform Act 2002 s 22(5)(e)(i) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 8(1), (3)(c)).
- 25 Police Reform Act 2002 s 22(5)(e)(ii).
- 26 Ie under ibid Sch 3 para 23 (see PARA 385 post) or Sch 3 para 25 (see PARA 388 post).
- 27 Ibid s 22(5)(f).
- 28 Ibid s 22(3)(a) (s 22(3)(a), (b) substituted by the Police and Justice Act 2006 s 6(1), Sch 4 para 11). As to consultation with the Association of Police Authorities see PARA 163 note 7 ante.
- 29 Police Reform Act 2002 s 22(3)(b) (as substituted: see note 28 supra). As to consultation with the Association of Chief Police Officers see PARA 163 note 7 ante.
- 30 Ibid s 22(3)(c).
- 31 Ibid s 22(6).
- 32 Ibid s 22(7). A requirement 'to have regard' to guidance means no more than that a person is required to take the guidance into account when exercising his functions and does not mean that he is obliged to comply with the guidance: *R v Police Complaints Board, ex p Madden, R v Police Complaints Board, ex p Rhone* [1983] 2 All ER 353, [1983] Crim LR 263.
- 33 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.
- 34 Police Reform Act 2002 s 22(8).

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### **346. Orders and regulations.**

The Secretary of State<sup>1</sup> may make regulations as to the procedure to be followed under any provision of Part 2<sup>2</sup> of the Police Reform Act 2002<sup>3</sup>. Without prejudice to the generality of this power or of any other power to make regulations conferred by any provision of the Act, the Secretary of State may also by regulations provide:

- 181 (1) for the appropriate authority<sup>4</sup>, in the case of a complaint<sup>5</sup> against any person, to be required, in accordance with procedures provided for in the regulations, to supply the person complained against<sup>6</sup> with a copy of the complaint<sup>7</sup>, and to supply the complainant<sup>8</sup> with a copy of the record made of that complaint<sup>9</sup>;
- 182 (2) for the matters to be taken into account in making any determination as to which procedure to adopt for handling complaints and dealing with recordable conduct matters<sup>10</sup> and DSI matters<sup>11</sup>;
- 183 (3) for any procedure to be discontinued where:
- 23
38. (a) a complaint is withdrawn<sup>12</sup>;
39. (b) the complainant indicates that he does not wish any further steps to be taken<sup>13</sup>; or
40. (c) the whole or part of the investigation of the complaint has been postponed until the conclusion of criminal proceedings and the complainant fails to indicate after the conclusion of those proceedings that he wishes the investigation to be resumed<sup>14</sup>,
- 24
- 184 and for the manner in which any such withdrawal or indication is to be effected or given, and for the circumstances in which it is to be taken as effected or given<sup>15</sup>;
- 185 (4) for requiring the subject-matter of a complaint that has been withdrawn to be treated, in the cases and to the extent specified in the regulations, as a recordable conduct matter<sup>16</sup>;
- 186 (5) for the manner in which any procedure is to be discontinued in a case where it is discontinued in accordance with the regulations, and for the consequences of any such discontinuance<sup>17</sup>;
- 187 (6) for the circumstances in which any investigation or other procedure may be or must be suspended to allow any other investigation or proceedings to continue, and for the consequences of such a suspension<sup>18</sup>;
- 188 (7) for the regulation of the appointment of persons to carry out investigations or to assist with the carrying out of such investigations, for limiting the persons who may be appointed and for the regulation of the carrying out of any such investigation<sup>19</sup>;
- 189 (8) for combining into a single investigation the investigation of any complaint, conduct matter<sup>20</sup> or DSI matter with the investigation or investigations of any one or more, or any combination, of the following:
- 25
41. (a) complaints (whether or not relating to the same conduct)<sup>21</sup>;
42. (b) conduct matters<sup>22</sup>; or
43. (c) DSI matters<sup>23</sup>,
- 26
- 190 and for splitting a single investigation into two or more separate investigations<sup>24</sup>;
- 191 (9) for the procedure to be followed in cases in which the Independent Police Complaints Commission<sup>25</sup> relinquishes the supervision or management of any investigation<sup>26</sup>, and for the consequences of its doing so<sup>27</sup>;
- 192 (10) for the manner in which any reference of a complaint, conduct matter or DSI matter to the Commission is to be made<sup>28</sup>;
- 193 (11) for applying the provisions of Part 2 of the Police Reform Act 2002 with such modifications as the Secretary of State thinks fit in cases where a complaint or recordable conduct matter relates to the conduct of a person who has ceased to be a person serving with the police since the time of the conduct<sup>29</sup>;
- 194 (12) for applying those provisions with such modifications as the Secretary of State thinks fit in cases where a complaint or conduct matter relates to the conduct of a person whose identity is unascertained at the time at which a complaint is

- made or a conduct matter is recorded<sup>30</sup>, or whose identity is not ascertained during, or subsequent to, the investigation of a complaint or recordable conduct matter<sup>31</sup>;
- 195 (13) for the Commission to be required to notify actions and decisions it takes in consequence of the receipt of a memorandum<sup>32</sup>, and to be authorised to provide information in relation to the matters notified<sup>33</sup>;
- 196 (14) for the records to be kept by police authorities and chief officers<sup>34</sup> with respect to complaints and purported complaints<sup>35</sup>, with respect to recordable conduct matters or DSI matters<sup>36</sup>, and with respect to the exercise and performance of their powers and duties under Part 2 of the Police Reform Act 2002<sup>37</sup>;
- 197 (15) for the Commission to be required to establish and maintain a register of such information provided to it as may be of a description specified in the regulations and for regulating the extent to which information stored on that register may be published or otherwise disclosed to any person by the Commission<sup>38</sup>;
- 198 (16) for chief officers to have power to delegate the exercise or performance of powers and duties conferred or imposed on them by or under Part 2 of the Police Reform Act 2002<sup>39</sup>;
- 199 (17) for the manner in which any notification is to be given and the time at which, or period within which, any such notification must be given<sup>40</sup>.

Before making any such regulations, the Secretary of State must consult<sup>41</sup> with the Commission<sup>42</sup>, the Association of Police Authorities<sup>43</sup>, the Association of Chief Police Officers<sup>44</sup>, and such other persons as he thinks fit<sup>45</sup>.

Every power conferred by the Police Reform Act 2002 on the Secretary of State to make orders or regulations is exercisable by statutory instrument<sup>46</sup>. A statutory instrument containing an order or regulations made in exercise of any such power is subject to annulment in pursuance of a resolution of either House of Parliament<sup>47</sup>. The power of the Secretary of State to make an order<sup>48</sup> or regulations includes power to make different provision for different cases<sup>49</sup>; to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit<sup>50</sup>; to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit<sup>51</sup>; and, in relation to the power to make regulations, includes power to make provision for any of the matters that may be provided for by such regulations to be determined, in accordance with the regulations, by the Commission<sup>52</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 I.e. the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended).

3 Ibid s 23(1). As to the regulations that have been made see the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643.

4 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

5 For the meaning of 'complaint' see PARA 329 ante.

6 For the meaning of 'person complained against' see PARA 340 note 13 ante.

7 Police Reform Act 2002 s 23(2)(a)(i).

8 For the meaning of 'complainant' see PARA 337 note 4 ante.

9 Police Reform Act 2002 s 23(2)(a)(ii).

10 For the meaning of 'recordable conduct matter' see PARA 362 note 19 post.

11 Police Reform Act 2002 s 23(2)(b) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 9(1), (2)). For the meaning of 'DSI matter' see PARA 329 ante.



12 Police Reform Act 2002 s 23(2)(c)(i).

13 Ibid s 23(2)(c)(ii).

14 Ibid s 23(2)(c)(iii).

15 Ibid s 23(2)(c).

16 Ibid s 23(2)(d).

17 Ibid s 23(2)(e).

18 Ibid s 23(2)(f).

19 Ibid s 23(2)(g).

20 For the meaning of 'conduct matter' see PARA 329 ante.

21 Police Reform Act 2002 s 23(2)(h)(i) (s 23(2)(h) substituted by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 9(1), (3)). For the meaning of 'conduct' see PARA 329 note 3 ante.

22 Police Reform Act 2002 s 23(2)(h)(ii) (as substituted: see note 21 supra).

23 Ibid s 23(2)(h)(iii) (as substituted: see note 21 supra).

24 Ibid s 23(2)(h) (as substituted: see note 21 supra).

25 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

26 For the meaning of 'investigation' in this context see PARA 337 note 16 ante.

27 Police Reform Act 2002 s 23(2)(i).

28 Ibid s 23(2)(j) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 9(1), (4)).

29 Police Reform Act 2002 s 23(2)(k). For the meaning of 'person serving with the police' see PARA 327 note 7 ante.

30 Ibid s 23(2)(l)(i).

31 Ibid s 23(2)(l)(ii).

32 Ibid s 23(2)(m)(i). The text refers to a memorandum under Sch 3 para 23 (see PARA 385 post) or Sch 3 para 25 (see PARA 388 post).

33 Ibid s 23(2)(m)(ii). For the meaning of 'information' see PARA 334 note 5 ante.

34 For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'chief officer' see PARA 316 note 6 ante.

35 Police Reform Act 2002 s 23(2)(n)(i).

36 Ibid s 23(2)(n)(ii) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 9(1), (5)).

37 Police Reform Act 2002 s 23(2)(n)(iii).

38 Ibid s 23(2)(o).

39 Ibid s 23(2)(p).

40 Ibid s 23(2)(q).

41 As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

42 Police Reform Act 2002 s 24(a).

43 Ibid s 24(b) (s 24(b), (c) substituted by the Police and Justice Act 2006 s 6(1), Sch 4 para 12). As to consultation with the Association of Police Authorities see PARA 163 note 7 ante.

44 Police Reform Act 2002 s 24(c) (as substituted: see note 43 supra). As to consultation with the Association of Chief Police Officers see PARA 163 note 7 ante.

45 Ibid s 24(d).

46 Ibid s 105(1).

47 Ibid s 105(2). This provision does not apply to any order under s 9(7) (see PARA 316 ante) (s 105(3)(a)); and any order that is required to be approved in draft by virtue of s 19(3) (see PARA 336 ante), s 99(6) (repealed), Sch 4 para 15A(2) (as added) (see PARA 529 post) or Sch 5 para 9A(2) (as added) (see PARA 533 post) (s 105(3)(b) (amended by the Anti-social Behaviour Act 2003 s 89(1), (2))).

48 Ie other than an order under the Police Reform Act 2002 s 9(7): see PARA 316 ante.

49 Ibid s 105(4)(a).

50 Ibid s 105(4)(b).

51 Ibid s 105(4)(c).

52 Ibid s 105(5).

## UPDATE

### 346 Orders and regulations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 7-40--Also, (18) for enabling representations on behalf of a person to whose conduct an investigation relates to be made to the Commission by a person who is not that person's legal representative but is of a description specified in the regulations: Police Reform Act 2002 s 23(2)(r) (added by Criminal Justice and Immigration Act 2008 Sch 23 para 2).

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### 347. Forces maintained otherwise than by police authorities.

The Independent Police Complaints Commission<sup>1</sup> and an authority other than a police authority<sup>2</sup> which maintains a body of constables<sup>3</sup> each has power to enter into an agreement with the other for the establishment and maintenance in relation to that body of constables of procedures corresponding or similar to any of those provided for by or under the Police Reform Act 2002<sup>4</sup>. If it appears to the Secretary of State<sup>5</sup> appropriate to do so in relation to any body of constables maintained otherwise than by a police authority to establish any such corresponding or similar procedures, he may by order<sup>6</sup> provide for the establishment and maintenance of such procedures in relation to that body of constables<sup>7</sup>. An agreement under these provisions must not be made, varied or terminated except with the approval of the Secretary of State<sup>8</sup>.

An agreement or order in relation to any body of constables may: (1) contain provision for enabling the Commission to bring and conduct, or otherwise participate or intervene in, any

proceedings which are identified by the agreement or order as disciplinary proceedings<sup>9</sup> in relation to members of that body of constables<sup>10</sup>; (2) provide for the application of procedures in relation to persons who are not themselves constables but are employed for the purposes of that body of constables and in relation to the conduct<sup>11</sup> of such persons, as well as in relation to members of that body of constables and their conduct<sup>12</sup>. Procedures established in accordance with any agreement or order have no effect in relation to anything done outside England and Wales<sup>13</sup> by any constable or any person employed for the purposes of a body of constables<sup>14</sup>.

1 Police Reform Act 2002 s 26(1)(a). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 For the meaning of 'police authority' see PARA 139 note 1 ante.

3 Police Reform Act 2002 s 26(1)(b). As to such bodies of constables see PARA 119 et seq ante. As to the office of constable see PARA 101 et seq ante.

4 Ibid s 26(1). The procedures referred to are those provided for by or under the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended): s 26(1). This provision is expressed to be notwithstanding any provision made by or under any enactment passed or made before 24 July 2002 (ie the date on which the Police Reform Act 2002 received Royal Assent): see s 26(1). For the meaning of 'enactment' see PARA 102 note 5 ante.

Where, immediately before 1 April 2004 (ie the date on which s 26 came into force), any procedures have effect in relation to any body of constables by virtue of the Police Act 1996 s 78 (repealed) (which made similar provision) or s 103, Sch 8 para 13 (repealed) (transitional provisions), those procedures continue to have effect thereafter (notwithstanding their repeal by the Police Reform Act 2002) until superseded by procedures established by virtue of any agreement or order under s 26: s 26(9). Section 26(9) has effect subject to the provisions of any order made under s 28 (transitional arrangements): s 26(10).

5 As to the Secretary of State see PARA 107 note 15 ante.

6 Before making such an order the Secretary of State must consult with both the Commission and the authority maintaining the body of constables to whom the order relates: Police Reform Act 2002 s 26(7). As to the making of orders see PARA 346 ante.

7 Ibid s 26(2)(a). In a case in which procedures in relation to that body of constables have effect by virtue of s 26(9) (see note 4 supra) or have previously been established by virtue of s 26, such an order may provide for those procedures to be superseded by the provision made by the order (s 26(2)(b)(i)), and may make transitional provision in connection with the replacement of the superseded procedures (s 26(2)(b)(ii)). It is the duty of the Secretary of State to secure that procedures are established and maintained under s 26(2) in relation to each of the following: the Ministry of Defence Police (s 26(3)(a)); and the British Transport Police Force (s 26(3)(b)). As to the Ministry of Defence Police see PARA 120 et seq ante; and as to the British Transport Police Force see PARA 129 ante. As to the order that has been made see the Independent Police Complaints Commission (Forces Maintained Otherwise than by Police Authorities) Order 2004, SI 2004/672.

8 Police Reform Act 2002 s 26(4).

9 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

10 Police Reform Act 2002 s 26(5).

11 For the meaning of 'conduct' see PARA 329 note 3 ante.

12 Police Reform Act 2002 s 26(6).

13 For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante.

14 Police Reform Act 2002 s 26(8).

### **348. Serious Organised Crime Agency.**

The Independent Police Complaints Commission<sup>1</sup> and the Serious Organised Crime Agency<sup>2</sup> must enter into an agreement for the establishment and maintenance in relation to members of the Agency's staff of procedures corresponding or similar to those provided for by or under the Police Reform Act 2002<sup>3</sup>. The agreement must not be made or varied except with the approval of the Secretary of State<sup>4</sup>, and must not be terminated unless it is replaced by another such agreement<sup>5</sup> and the Secretary of State approves<sup>6</sup>.

The agreement may contain provision for enabling the Commission to bring and conduct, or otherwise participate or intervene in, any proceedings which are identified by the agreement as disciplinary proceedings<sup>7</sup> in relation to members of the Agency's staff<sup>8</sup>; but it must not confer any function on the Commission in relation to so much of any complaint or conduct matter<sup>9</sup> as relates to the direction and control of the Agency by the Director General or other members of the Agency<sup>10</sup>. Procedures established in accordance with the agreement have no effect in relation to anything done outside England and Wales<sup>11</sup> by any member of the staff of the Agency<sup>12</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 As to the Serious Organised Crime Agency see PARA 430 et seq post.

3 Police Reform Act 2002 s 26A(1) (s 26A added by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 8). The procedures referred to in the text are those provided for by or under the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended): s 26A(1) (as so added).

4 Ibid s 26A(2)(a) (as added: see note 3 supra). As to the Secretary of State see PARA 107 note 15 ante.

5 Ibid s 26A(2)(b)(i) (as added: see note 3 supra).

6 Ibid s 26A(2)(b)(ii) (as added: see note 3 supra).

7 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

8 Police Reform Act 2002 s 26A(3) (as added: see note 3 supra).

9 For the meanings of 'complaint' and 'conduct matter' see PARA 329 ante.

10 Police Reform Act 2002 s 26A(4) (as added: see note 3 supra).

11 For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante.

12 Police Reform Act 2002 s 26A(5) (as added: see note 3 supra).

### **UPDATE**

### **348 Serious Organised Crime Agency**

TEXT AND NOTES--See also 2002 Act s 26A(4A) (added by Serious Crime Act 2007 Sch 8 para 161).

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### **349. National Policing Improvement Agency.**

The Independent Police Complaints Commission<sup>1</sup> and the National Policing Improvement Agency<sup>2</sup> must enter into an agreement for the establishment in relation to members of the Agency's staff of procedures corresponding or similar to those provided for by or under the Police Reform Act 2002<sup>3</sup>. The agreement must not be made or varied except with the approval of the Secretary of State<sup>4</sup>, and must not be terminated unless it is replaced by another such agreement<sup>5</sup> and the Secretary of State approves<sup>6</sup>.

The agreement may contain provision for enabling the Commission to bring and conduct, or otherwise participate or intervene in, any proceedings which are identified by the agreement as disciplinary hearings<sup>7</sup> in relation to members of the Agency's staff<sup>8</sup>; but it must not confer any function on the Commission in relation to so much of any complaint or conduct matter<sup>9</sup> as relates to the direction and control of the Agency by the Agency's chief executive or by other members of the Agency<sup>10</sup>. Procedures established in accordance with the agreement have no effect in relation to anything done outside England and Wales<sup>11</sup> by any member of the Agency's staff<sup>12</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 As to the National Policing Improvement Agency see PARA 223 ante.

3 Police Reform Act 2002 s 26B(1) (s 26B added by the Police and Justice Act 2006 s 1, Sch 1 para 87). The procedures referred to are those provided for by or under the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended): s 26B(1) (as so added). As to the Secretary of State see PARA 107 note 15 ante.

4 Ibid s 26B(2)(a) (as added: see note 3 supra).

5 Ibid s 26B(2)(b)(i) (as added: see note 3 supra).

6 Ibid s 26B(2)(b)(ii) (as added: see note 3 supra).

7 'Disciplinary hearing' is not defined; but for the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

8 Police Reform Act 2002 s 26B(3) (as added: see note 3 supra).

9 For the meanings of 'complaint' and 'conduct matter' see PARA 329 ante.

10 Police Reform Act 2002 s 26B(4) (as added: see note 3 supra).

11 For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante.

12 Police Reform Act 2002 s 26B(5) (as added: see note 3 supra).

## UPDATE

### 349 National Policing Improvement Agency

TEXT AND NOTES--See also 2002 Act s 26B(4A) (added by Serious Crime Act 2007 Sch 8 para 162).

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### 350. Conduct of the Commission's staff.

The Secretary of State<sup>1</sup> must by regulations<sup>2</sup> make provision for the manner in which the following cases are to be handled or dealt with: (1) cases in which allegations of misconduct are made against members of the Independent Police Complaints Commission's staff<sup>3</sup>; and (2) cases in which there is otherwise an indication that there may have been misconduct by a member of the Commission's staff<sup>4</sup>. Before making any such regulations, the Secretary of State must consult with the Commission<sup>5</sup>.

The regulations may provide for it to be the duty of any person<sup>6</sup> on whom functions are conferred by the regulations to have regard, in the carrying out of those functions, to any guidance given by such persons and in such manner as may be specified in the regulations<sup>7</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 Such regulations may apply, with such modifications as the Secretary of State thinks fit, any provision made by or under the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended): s 27(2). As to the making of regulations see PARA 346 ante. As to the regulations that have been made see the Independent Police Complaints Commission (Staff Conduct) Regulations 2004, SI 2004/660.

3 Police Reform Act 2002 s 27(1)(a). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

4 Ibid s 27(1)(b).

5 Ibid s 27(4). As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

6 For the meaning of 'person' see PARA 110 note 6 ante.

7 Police Reform Act 2002 s 27(3).

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## (B) HANDLING OF COMPLAINTS

### 351. Initial handling and recording of complaints.

Where a complaint<sup>1</sup> is made to the Independent Police Complaints Commission<sup>2</sup>, it must ascertain whether the complainant<sup>3</sup> is content for the police authority<sup>4</sup> or chief officer<sup>5</sup> who is the appropriate authority<sup>6</sup> to be notified of the complaint<sup>7</sup>, and must give notification of the complaint to the appropriate authority if, and only if, the complainant is so content<sup>8</sup>. Where a complaint is made to a police authority, it must determine whether or not it is itself the appropriate authority<sup>9</sup> and, if it determines that it is not, it must give notification of the complaint to the person who is<sup>10</sup>. Where a complaint is made to a chief officer, he must determine whether or not he is himself the appropriate authority<sup>11</sup> and, if he determines that he is not, he must give notification of the complaint to the person who is<sup>12</sup>.

Where the Commission, a police authority or a chief officer gives notification of a complaint under any of the above provisions or the Commission brings any matter to the appropriate authority's attention<sup>13</sup>, the person who gave the notification or, as the case may be, the Commission must notify the complainant that the notification has been given and of what it contained<sup>14</sup>, or that the matter has been brought to the appropriate authority's attention to be dealt with otherwise than as a complaint<sup>15</sup>.

Where: (1) a police authority determines, in the case of any complaint made to the authority, that it is itself the appropriate authority<sup>16</sup>; (2) a chief officer determines, in the case of any

complaint made to that chief officer, that he is himself the appropriate authority<sup>17</sup>; or (3) a complaint is notified<sup>18</sup> to a police authority or chief officer<sup>19</sup>, the authority or chief officer must record the complaint<sup>20</sup>.

Nothing in these provisions requires the notification or recording by any person of any complaint about any conduct if that person is satisfied that the subject-matter of the complaint has been, or is already being, dealt with by means of criminal or disciplinary proceedings<sup>21</sup> against the person whose conduct<sup>22</sup> it was<sup>23</sup>, or the complaint has been withdrawn<sup>24</sup>.

1 For the meaning of 'complaint' see PARA 329 ante.

2 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

3 For the meaning of 'complainant' see PARA 337 note 4 ante.

4 For the meaning of 'police authority' see PARA 139 note 1 ante.

5 For the meaning of 'chief officer' see PARA 316 note 6 ante.

6 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

7 Police Reform Act 2002 s 13, Sch 3 para 2(1)(a).

8 Ibid Sch 3 para 2(1)(b). Where the Commission: (1) is prevented by this provision from notifying any complaint to the appropriate authority (Sch 3 para 2(4)(a)); and (2) considers that it is in the public interest for the subject-matter of the complaint to be brought to the attention of the appropriate authority and recorded under Sch 3 para 11 (see PARA 362 post) (Sch 3 para 2(4)(b)), the Commission may bring that matter to the appropriate authority's attention as if it were a recordable conduct matter, and (if it does so) the provisions of Sch 3 have effect accordingly as if it were such a matter (Sch 3 para 2(4)). For the meaning of 'recordable conduct matter' see PARA 362 note 19 post. As to the giving of notifications see PARA 344 ante.

9 Ibid Sch 3 para 2(2)(a).

10 Ibid Sch 3 para 2(2)(b). For the meaning of 'person' see PARA 110 note 6 ante.

11 Ibid Sch 3 para 2(3)(a).

12 Ibid Sch 3 para 2(3)(b).

13 Ie under ibid Sch 3 para 2(4): see note 8 supra.

14 Ibid Sch 3 para 2(5)(a).

15 Ibid Sch 3 para 2(5)(b).

16 Ibid Sch 3 para 2(6)(a).

17 Ibid Sch 3 para 2(6)(b).

18 Ie under ibid Sch 3 para 2.

19 Ibid Sch 3 para 2(6)(c).

20 Ibid Sch 3 para 2(6). Where a complaint is so recorded, the appropriate authority must: (1) supply to the complainant a copy of the record made of that complaint (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 14(1)(a)); and (2) subject to reg 14(2)-(4), supply to the person complained against a copy of the complaint (reg 14(1)(b)). Such copy of a complaint may be in a form which keeps anonymous the identity of the complainant or of any other person: reg 14(2). An appropriate authority may decide not to supply such a copy of a complaint if it is of the opinion that to do so: (a) might prejudice any criminal investigation or pending proceedings (reg 14(3)(a)); or (b) would otherwise be contrary to the public interest (reg 14(3)(b)). Where an appropriate authority decides not to supply such a copy, it must keep that decision under regular review: reg 14(4). For the meaning of 'person complained against' see PARA 340 note 13 ante.

21 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

22 For the meaning of 'conduct' see PARA 329 note 3 ante.

23 Police Reform Act 2002 Sch 3 para 2(7)(a).

24 Ibid Sch 3 para 2(7)(b).

## UPDATE

### 351 Initial handling and recording of complaints

NOTE 20--See also SI 2004/643 regs 14A-14E (added by SI 2008/2866), which relate to written notice to be given by the investigator to the person concerned (SI 2004/643 reg 14A); who may act as his police friend (reg 14B); representations which may be made to the investigator (reg 14C); date and time for interviews during investigation (reg 14D); and report of the investigation (reg 14E).

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### 352. Failures to notify or record a complaint.

Where anything which is or purports to be a complaint<sup>1</sup> is received by a police authority<sup>2</sup> or chief officer<sup>3</sup>, whether in consequence of having been made directly or of a notification<sup>4</sup>, if the police authority or chief officer decides not to take action<sup>5</sup> for notifying or recording the whole or any part of what has been received, the authority or chief officer must notify the complainant<sup>6</sup> of the following matters: (1) the decision to take no action and, if that decision relates to only part of what was received, the part in question<sup>7</sup>; (2) the grounds on which the decision was made<sup>8</sup>; and (3) that complainant's right to appeal against that decision<sup>9</sup>.

The complainant has a right of appeal to the Independent Police Complaints Commission<sup>10</sup> against any failure by the police authority or chief officer to make a determination or to notify or record anything<sup>11</sup> in relation to the complaint<sup>12</sup>. An appeal must be made in writing<sup>13</sup> within 28 days<sup>14</sup> of the date on which notification of the failure is made or sent<sup>15</sup> to the complainant<sup>16</sup>. Where the Commission receives such an appeal it must notify the police authority or chief officer concerned of the appeal<sup>17</sup>, and request any information<sup>18</sup> from any person<sup>19</sup> which it considers necessary to dispose of the appeal<sup>20</sup>.

The Commission must determine the outcome of the appeal as soon as practicable<sup>21</sup>. The Commission must determine whether any action<sup>22</sup> should have been taken in the case in question<sup>23</sup> and, if the Commission finds in the complainant's favour, give such directions as it considers appropriate to the police authority or chief officer as to the action to be taken for making a determination, or for notifying or recording what was received<sup>24</sup>. The Commission must give notification both to the police authority or, as the case may be, the chief officer and to the complainant of any such determination made by it<sup>25</sup> and must give notification to the complainant of any such direction given by it to the police authority or chief officer<sup>26</sup>. The Commission must also notify the complainant and the police authority or chief officer concerned of the reasons for its determination<sup>27</sup>.

1    le a complaint in relation to which the Police Reform Act 2002 s 13, Sch 3 para 2 has effect: see PARA 351 ante. For the meaning of 'complaint' see PARA 329 ante.

2    For the meaning of 'police authority' see PARA 139 note 1 ante.

3    For the meaning of 'chief officer' see PARA 316 note 6 ante.



4 Police Reform Act 2002 Sch 3 para 3(1). The notification referred to is one under Sch 3 para 2: see PARA 351 ante.

5 Ie under ibid Sch 3 para 2: see PARA 351 ante.

6 For the meaning of 'complainant' see PARA 337 note 4 ante.

7 Police Reform Act 2002 Sch 3 para 3(2)(a).

8 Ibid Sch 3 para 3(2)(b).

9 Ibid Sch 3 para 3(2)(c).

10 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

11 Ie under the Police Reform Act 2002 Sch 3 para 2: see PARA 351 ante.

12 Ibid Sch 3 para 3(3). The Secretary of State may by regulations make provision: (1) for the form and manner in which such appeals are to be brought (Sch 3 para 3(7)(a)); (2) for the period within which any such appeal must be brought (Sch 3 para 3(7)(b)); and (3) for the procedure to be followed by the Commission when dealing with or disposing of any such appeal (Sch 3 para 3(7)(c)). As to such regulations see the text to notes 13-21, 27 infra. As to the making of regulations see PARA 346 ante. As to the Secretary of State see PARA 107 note 15 ante.

13 See the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 8(2). For the meaning of 'writing' see PARA 115 note 9 ante.

14 The Commission may extend this time period in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so: ibid reg 8(8).

15 Ie under the Police Reform Act 2002 Sch 3 para 3(2): see the text to notes 5-9 supra.

16 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 8(1). The appeal must state: (1) details of the complaint (reg 8(2)(a)); (2) the date on which the complaint was made (reg 8(2)(b)); (3) the name of the police force or police authority which gave notification of the failure (reg 8(2)(c)); (4) the grounds for the appeal (reg 8(2)(d)); and (5) the date on which the complainant was notified of the determination or of the failure to record the complaint (reg 8(2)(e)). Where the Commission receives an appeal which fails to comply with one or more of the requirements mentioned in reg 8(2), it may decide to proceed as if those requirements had been complied with: reg 8(4). For the meaning of 'police force' see PARA 102 note 11 ante.

17 Ibid reg 8(3)(a).

18 For the meaning of 'information' see PARA 334 note 5 ante.

19 For the meaning of 'person' see PARA 110 note 6 ante.

20 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 8(3)(b). A police authority or chief officer must supply to the Commission any information so requested: reg 8(5).

21 Ibid reg 8(6).

22 Ie under the Police Reform Act 2002 Sch 3 para 2: see PARA 351 ante.

23 Ibid Sch 3 para 3(4)(a).

24 Ibid Sch 3 para 3(4)(b). It is the duty of a police authority or chief officer to comply with any such directions: Sch 3 para 4. Such directions may require action taken in pursuance of the directions to be treated as taken in accordance with any provision of Sch 3 para 2 (see PARA 351 ante) as may be specified in the direction: Sch 3 para 3(5).

25 Ibid Sch 3 para 3(6)(a).

26 Ibid Sch 3 para 3(6)(b).

27 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 8(7).

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### **353. Duties to preserve evidence relating to complaints.**

Where a complaint<sup>1</sup> is made about the conduct<sup>2</sup> of a chief officer<sup>3</sup>, it is the duty of the police authority<sup>4</sup> maintaining his force to secure that all such steps as are appropriate for the purposes of the statutory provisions relating to complaints<sup>5</sup> are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to the conduct complained of<sup>6</sup>. It is the duty of a police authority to comply with all such directions as may be given to it by the Independent Police Complaints Commission<sup>7</sup> in relation to the performance of this duty<sup>8</sup>.

Where a complaint is made to a chief officer about the conduct of a person under his direction and control<sup>9</sup>, or a chief officer becomes aware that a complaint about the conduct of a person under his direction or control has been made to the Commission or to a police authority<sup>10</sup>, the chief officer must take all such steps as appear to him to be appropriate for the purposes of those provisions for obtaining and preserving evidence relating to the conduct complained of<sup>11</sup>. The chief officer's duty must be performed as soon as practicable after the complaint is made or, as the case may be, he becomes aware of it<sup>12</sup>. After that, he is under a duty, until he is satisfied that it is no longer necessary to do so, to continue to take the steps from time to time appearing to him to be appropriate for obtaining and preserving evidence relating to the conduct complained of<sup>13</sup>. It is also the duty of a chief officer to take all such specific steps for obtaining or preserving evidence relating to any conduct that is the subject-matter of a complaint as he may be directed to take by the police authority maintaining his force or by the Commission<sup>14</sup>.

1 For the meaning of 'complaint' see PARA 329 ante.

2 For the meaning of 'conduct' see PARA 329 note 3 ante.

3 For the meaning of 'chief officer' see PARA 316 note 6 ante.

4 For the meaning of 'police authority' see PARA 139 note 1 ante.

5 For the purposes of the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended).

6 Ibid s 13, Sch 3 para 1(1).

7 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

8 Police Reform Act 2002 Sch 3 para 1(5).

9 Ibid Sch 3 para 1(2)(a).

10 Ibid Sch 3 para 1(2)(b).

11 Ibid Sch 3 para 1(2).

12 Ibid Sch 3 para 1(3).

13 Ibid Sch 3 para 1(4).

14 Ibid Sch 3 para 1(6).

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### **354. Reference of complaints to the Commission.**

It is the duty of the appropriate authority<sup>1</sup> to refer a complaint<sup>2</sup> to the Independent Police Complaints Commission<sup>3</sup> if:

- 200 (1) the complaint is one alleging that the conduct<sup>4</sup> complained of has resulted in death or serious injury<sup>5</sup>;
- 201 (2) the complaint is of a description specified for these purposes in regulations made by the Secretary of State<sup>6</sup>; or
- 202 (3) the Commission notifies the appropriate authority that it requires the complaint in question to be referred to the Commission for its consideration<sup>7</sup>.

Where a complaint is required to be referred to the Commission under head (1) or head (2) above, notification of the complaint must be given to the Commission not later than the end of the day following the day on which it first becomes clear to the appropriate authority that the complaint is one to which the head in question applies<sup>8</sup>, and in such manner as the Commission specifies<sup>9</sup>. Where a complaint is required to be referred to the Commission under head (3) above, notification of the complaint must be given to the Commission not later than the end of the day following the day on which the Commission notifies the appropriate authority that the complaint is to be referred<sup>10</sup>, and in such manner as the Commission specifies<sup>11</sup>.

In a case where there is no obligation under heads (1) to (3) above to make a reference, the appropriate authority may refer a complaint to the Commission if that authority considers that it would be appropriate to do so by reason of the gravity of the subject-matter of the complaint<sup>12</sup> or any exceptional circumstances<sup>13</sup>. In a case in which such a reference<sup>14</sup> or a reference under heads (1) to (3) above is neither made nor required to be made, a police authority<sup>15</sup> may refer a complaint to the Commission if: (a) it is one in relation to which the chief officer of police<sup>16</sup> of the police force<sup>17</sup> maintained by that authority is the appropriate authority<sup>18</sup>; and (b) the police authority considers that it would be appropriate to do so by reason of the gravity of the subject-matter of the complaint<sup>19</sup> or any exceptional circumstances<sup>20</sup>. A police authority or chief officer which refers a complaint to the Commission under these provisions must give a notification of the making of the reference to the complainant<sup>21</sup> and, except in a case where it appears to that authority or chief officer that to do so might prejudice a possible future investigation of the complaint, to the person complained against<sup>22</sup>.

The power of the Commission by virtue of head (3) above to require a complaint to be referred to it<sup>23</sup>, and the power of a police authority or chief officer to refer<sup>24</sup> a complaint to the Commission<sup>25</sup>, are each exercisable at any time irrespective of whether the complaint is already being investigated by any person<sup>26</sup> or has already been considered by the Commission<sup>27</sup>. However, a complaint that has already been referred to the Commission under these provisions on a previous occasion is not required to be referred again unless the Commission so directs<sup>28</sup>, and must not be referred in exercise of any power conferred by these provisions unless the Commission consents<sup>29</sup>.

1 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

2 For the meaning of 'complaint' see PARA 329 ante.

3 As to the Independent Police Complaints Commission see PARA 316 et seq ante. As to the duties of the Commission on references see PARA 355 post. Where there is an obligation under the Police Reform Act 2002 s

13, Sch 3 para 4 to refer a complaint to the Commission, it must be so referred within such period as may be provided for by regulations made by the Secretary of State: Sch 3 para 4(4). As to such provision see the text to notes 8-11 *infra*. As to the Secretary of State see PARA 107 note 15 *ante*. As to the making of regulations see PARA 346 *ante*.

4 For the meaning of 'conduct' see PARA 329 note 3 *ante*.

5 Police Reform Act 2002 Sch 3 para 4(1)(a). For the meaning of 'serious injury' see PARA 329 note 15 *ante*. As to the handling of death or serious injury matters see PARA 366 *et seq post*.

6 *Ibid* Sch 3 para 4(1)(b). The complaints specified are: (1) any complaints not falling within head (1) in the text but alleging conduct which constitutes: (a) a serious assault, as defined in guidance issued by the Commission (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 2(1), (2)(a)(i)); (b) a serious sexual offence, as defined in such guidance (reg 2(1), (2)(a)(ii)); (c) serious corruption, as defined in such guidance (reg 2(1), (2)(a)(iii)); (d) a criminal offence or behaviour which is liable to lead to a disciplinary sanction and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in such guidance (reg 2(1), (2)(a)(iv)); (e) a relevant offence (reg 2(1), (2)(a)(v) (substituted by SI 2005/3389)); or (2) complaints which arise from the same incident as one in which any conduct falling within heads (1)(a)-(e) *supra* or head (1) in the text is alleged (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 2(1), (2)(b)). 'A relevant offence' means: (i) an offence for which the sentence is fixed by law; (ii) an offence for which a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of seven years (or might be so sentenced but for the restrictions imposed by the Magistrates' Courts Act 1980 s 33 (see MAGISTRATES vol 29(2) (Reissue) PARA 661)): Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 1(2). As to the power of the Commission to issue guidance see PARA 345 *ante*.

7 Police Reform Act 2002 Sch 3 para 4(1)(c).

8 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 2(3)(a) (amended by SI 2006/1406).

9 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 2(3)(b).

10 *Ibid* reg 2(4)(a) (amended by SI 2006/1406).

11 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 2(4)(b).

12 Police Reform Act 2002 Sch 3 para 4(2)(a).

13 *Ibid* Sch 3 para 4(2)(b).

14 *Ie* a reference under *ibid* Sch 3 para 4(2): see the text to notes 12-13 *supra*.

15 For the meaning of 'police authority' see PARA 139 note 1 *ante*.

16 For the meaning of 'chief officer of police' see PARA 105 note 7 *ante*.

17 For the meaning of 'police force' see PARA 102 note 11 *ante*.

18 Police Reform Act 2002 Sch 3 para 4(3)(a).

19 *Ibid* Sch 3 para 4(3)(b)(i).

20 *Ibid* Sch 3 para 4(3)(b)(ii).

21 *Ibid* Sch 3 para 4(6)(a). For the meaning of 'complainant' see PARA 337 note 4 *ante*.

22 *Ibid* Sch 3 para 4(6)(b). For the meaning of 'person complained against' see PARA 340 note 13 *ante*.

23 *Ibid* Sch 3 para 4(5)(a).

24 *Ie* under *ibid* Sch 3 para 4(2) or (3): see the text to notes 12-20 *supra*.

25 *Ibid* Sch 3 para 4(5)(b).

26 For the meaning of 'person' see PARA 110 note 6 *ante*.

27 Police Reform Act 2002 Sch 3 para 4(5).

28 Ibid Sch 3 para 4(7)(a).

29 Ibid Sch 3 para 4(7)(b).

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### **355. Duties of Commission on references.**

It is the duty of the Independent Police Complaints Commission<sup>1</sup> in the case of every complaint<sup>2</sup> referred to it<sup>3</sup> by a police authority<sup>4</sup> or chief officer<sup>5</sup>, to determine whether or not it is necessary for the complaint to be investigated<sup>6</sup>. Where the Commission determines that it is not necessary for a complaint to be investigated, it may, if it thinks fit, refer the complaint back to the appropriate authority<sup>7</sup> to be dealt with<sup>8</sup> by that authority<sup>9</sup>. Where the Commission so refers a complaint back, it must give a notification of the making of the reference back to the complainant<sup>10</sup> and, except in a case where it appears to the Commission that to do so might prejudice a possible future investigation of the complaint, to the person complained against<sup>11</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 For the meaning of 'complaint' see PARA 329 ante.

3 As to such references see PARA 354 ante.

4 For the meaning of 'police authority' see PARA 139 note 1 ante.

5 For the meaning of 'chief officer' see PARA 316 note 6 ante.

6 Police Reform Act 2002 s 13, Sch 3 para 5(1). As to investigations see PARA 369 et seq post.

7 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

8 Ie in accordance with the Police Reform Act 2002 Sch 3 para 6: see PARA 356 post.

9 Ibid Sch 3 para 5(2).

10 Ibid Sch 3 para 5(3)(a). For the meaning of 'complainant' see PARA 337 note 4 ante.

11 Ibid Sch 3 para 5(3)(b). For the meaning of 'person complained against' see PARA 340 note 13 ante.

### **UPDATE**

### **355 Duties of Commission on references**

NOTE 6--See *R (on the application of Morrison) v Independent Police Complaints Commission* [2009] EWHC 2589 (Admin), [2009] All ER (D) 257 (Oct) (decision that complaint should be investigated locally did not breach right to effective investigation).

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### 356. Handling of complaints by the appropriate authority.

Where a complaint<sup>1</sup> has been recorded by the appropriate authority<sup>2</sup> then, unless the complaint is one which has been, or must be, referred<sup>3</sup> to the Independent Police Complaints Commission<sup>4</sup> and is not for the time being either referred back to the authority<sup>5</sup> or the subject of a determination<sup>6</sup>, the appropriate authority must determine whether or not the complaint is suitable for being subjected to local resolution<sup>7</sup>. If the authority determines that the complaint is so suitable and the complainant consents<sup>8</sup>, it must make arrangements for it to be so subjected<sup>9</sup>; and in any other case, it must make arrangements for the complaint to be investigated by that authority on its own behalf<sup>10</sup>.

A determination that a complaint is suitable for being subjected to local resolution must not be made unless either: (1) the appropriate authority is satisfied that the conduct<sup>11</sup> complained of (even if it were proved) would not justify the bringing of any criminal or disciplinary proceedings<sup>12</sup>; or (2) the Commission<sup>13</sup> has approved the use of local resolution<sup>14</sup>. The Commission may approve the use of local resolution in the case of any complaint if, on an application by the appropriate authority<sup>15</sup>, the Commission is satisfied:

203 (a) that the following two conditions are fulfilled:

27

44. (i) that the conduct complained of (even if it were proved) would not justify the bringing of any criminal proceedings<sup>16</sup>; and

45. (ii) that any disciplinary proceedings the bringing of which would be justified in respect of that conduct (even if it were proved) would be unlikely to result in a dismissal, a requirement to resign or retire, a reduction in rank or other demotion or the imposition of a fine<sup>17</sup>; or

28

204 (b) that it will not be practicable (even if the complaint is thoroughly investigated) for either of the following to be brought:

29

46. (i) criminal proceedings in respect of the conduct to which it relates that would be likely to result in a conviction<sup>18</sup>; or

47. (ii) disciplinary proceedings in respect of that conduct that would be likely to result in a dismissal, a requirement to resign or retire, a reduction in rank or other demotion or the imposition of a fine<sup>19</sup>.

30

1 For the meaning of 'complaint' see PARA 329 ante.

2 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante. As to the recording of complaints see PARA 351 ante.

3 Ie under the Police Reform Act 2002 s 13, Sch 3 para 4: see PARA 354 ante.

4 Ibid Sch 3 para 6(1)(a). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

5 Ie under ibid Sch 3 para 5: see PARA 355 ante.

6 Ibid Sch 3 para 6(1)(b). The text refers to a determination under Sch 3 para 15: see PARA 369 post.

7 Ibid Sch 3 para 6(2). This provision is expressed to be subject to Sch 3 para 7: see PARA 357 post. For the meaning of 'local resolution' see PARA 358 note 2 post.

8 Before a complainant can give his consent for these purposes to the local resolution of his complaint he must have been informed of his rights of appeal under ibid Sch 3 para 9 (see PARA 359 post): Sch 3 para 6(6). A consent given for these purposes is not capable of being withdrawn at any time after the procedure for the local

resolution of the complaint has been begun: Sch 3 para 6(7). For the meaning of 'complainant' see PARA 337 note 4 ante.

9 Ibid Sch 3 para 6(2)(a).

10 Ibid Sch 3 para 6(2)(b). As to investigations see PARA 369 et seq post.

11 For the meaning of 'conduct' see PARA 329 note 3 ante.

12 Police Reform Act 2002 Sch 3 para 6(3)(a). For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

13 Ie in a case falling within ibid Sch 3 para 6(4): see the text to notes 15-19 infra.

14 Ibid Sch 3 para 6(3)(b).

15 No more than one application may be made to the Commission for the purposes of ibid Sch 3 para 6(4) in respect of the same complaint: Sch 3 para 6(5).

16 Ibid Sch 3 para 6(4)(a)(i).

17 Ibid Sch 3 para 6(4)(a)(ii).

18 Ibid Sch 3 para 6(4)(b)(i).

19 Ibid Sch 3 para 6(4)(b)(ii).

## UPDATE

### 356 Handling of complaints by the appropriate authority

TEXT AND NOTES 17, 19--Police Reform Act 2002 Sch 3 para 6(4)(a)(ii), (b)(ii) amended: Criminal Justice and Immigration Act 2008 Sch 23 para 4. For savings see SI 2008/2993.

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### 357. Dispensation by the Commission.

If, in a case in which the provisions<sup>1</sup> relating to the handling of complaints<sup>2</sup> by an appropriate authority<sup>3</sup> apply, the appropriate authority considers:

- 205 (1) that it should handle the complaint otherwise than in accordance with the statutory provisions<sup>4</sup> or should take no action in relation to it<sup>5</sup>; and
- 206 (2) that the complaint falls within a description of complaints specified in regulations made by the Secretary of State<sup>6</sup> for these purposes<sup>7</sup>,

the appropriate authority may apply to the Independent Police Complaints Commission<sup>8</sup>, in accordance with the regulations, for permission to handle the complaint in whatever manner (if any) that authority thinks fit<sup>9</sup>. The appropriate authority must notify the complainant about the making of the application<sup>10</sup>.

Where such an application is made to the Commission, it must, in accordance with regulations made by the Secretary of State, consider the application and determine whether to grant the

permission applied for<sup>11</sup> and notify its decision to the appropriate authority and the complainant<sup>12</sup>.

Where the Commission gives permission to handle the complaint in whatever manner (if any) the appropriate authority thinks fit, the authority is not required<sup>13</sup> to take any action in relation to the complaint<sup>14</sup> but may handle the complaint in whatever manner it thinks fit, or take no action in relation to the complaint, and for the purposes of handling the complaint may take any step that it could have taken, or would have been required to take, but for the permission<sup>15</sup>. Where the Commission determines that no permission should be granted, it must refer the matter back to the appropriate authority for the making of a determination<sup>16</sup> as to suitability for local resolution<sup>17</sup> and the authority must then make that determination<sup>18</sup>.

1   le a case in which the Police Reform Act 2002 s 13, Sch 3 para 6 applies: see PARA 356 ante.

2   For the meaning of 'complaint' see PARA 329 ante.

3   For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

4   le otherwise than in accordance with the Police Reform Act 2002 Sch 3.

5   Ibid Sch 3 para 7(1)(a).

6   As to the making of regulations see PARA 346 ante. As to the Secretary of State see PARA 107 note 15 ante.

7   Police Reform Act 2002 Sch 3 para 7(1)(b). The complaints which are specified are complaints where the appropriate authority considers that: (1) more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either that no good reason for the delay has been shown or that injustice would be likely to be caused by the delay (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 3(1), (2)(a)); (2) the matter is already the subject of a complaint (reg 3(1), (2)(b)); (3) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address (reg 3(1), (2)(c)); (4) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints (reg 3(1), (2)(d)); (5) the complaint is repetitious (reg 3(1), (2)(e)); or (6) it is not reasonably practicable to complete the investigation of the complaint or any other procedures under the Police Reform Act 2002 Sch 3 (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 3(1), (2)(f)). For the purposes of head (5) supra, a complaint is repetitious if, and only if: (a) it is substantially the same as a previous complaint (whether made by or on behalf of the same or a different complainant), or it concerns substantially the same conduct as a previous conduct matter (reg 3(3)(a)); (b) it contains no fresh allegations which significantly affect the account of the conduct complained of (reg 3(3)(b)); (c) no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is tendered in support of it (reg 3(3)(c)); and (d) as respects the previous complaint or conduct matter: (i) the requirements of the Police Reform Act 2002 Sch 3 para 23(7) or Sch 3 para 24(6) (determination by the appropriate authority of what action to take: see PARAS 385-386 post) were complied with; (ii) the complaint was locally resolved in accordance with the provisions of Sch 3 para 8 (see PARA 358 post); (iii) the Independent Police Complaints Commission gave the appropriate authority a direction under the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 7(7)(b) (see PARA 382 post); (iv) the complainant gave such notification that he withdrew the complaint as is mentioned in reg 15(1)(a) (see PARA 360 post); or (v) the Commission, under the Police Reform Act 2002 Sch 3 para 7 (see the text to notes 11-12 infra), gave the appropriate authority permission to handle the complaint in whatever way it saw fit (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 3(3)(d)(i)-(v)). For the purposes of head (6) supra, it is not reasonably practicable to complete the investigation of a complaint or any other procedures under the Police Reform Act 2002 Sch 3 if, and only if: (A) it is not reasonably practicable to communicate with the complainant or a person acting on his behalf (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 3(4)(a)); or (B) it is not reasonably practicable to complete a satisfactory investigation in consequence of: (aa) a refusal or failure, on the part of the complainant, to make a statement or afford other reasonable assistance for the purposes of the investigation (reg 3(4)(b)(i)); or (bb) the lapse of time since the event or events forming the subject-matter of the complaint (reg 3(4)(b)(ii)). Any reference to action not being reasonably practicable includes a reference to action which it does not appear reasonably practicable to take within a period which is reasonable in all the circumstances of the case: reg 3(5). For the meaning of 'complainant' see PARA 337 note 4 ante. As to interested persons see PARA 338 ante. For the meaning of 'conduct' see PARA 329 note 3 ante. For the meaning of 'conduct matter' see PARA 329 ante. As to the Independent Police Complaints Commission see PARA 316 et seq ante.

8   No more than one application may be made to the Commission under the Police Reform Act 2002 Sch 3 para 7 in respect of the same complaint: Sch 3 para 7(7).



9 Ibid Sch 3 para 7(1). An application for permission to handle a complaint in whatever manner (if any) an authority thinks fit must be in writing and must be accompanied by: (1) a copy of the complaint (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 3(6)(a)); (2) an explanation of the appropriate authority's reasons for making the application (reg 3(6)(b)); (3) in a case falling within reg 3(2)(e) (see note 7 head (5) supra), the previous complaint and a copy of the record of any resolution, withdrawal or dispensation of that complaint (reg 3(6)(c)); (4) copies of any other documents or material in the possession of the appropriate authority which are relevant to the complaint (reg 3(6)(d)). The appropriate authority must supply any further information requested by the Commission for the purpose of considering an application by that authority: reg 3(7). For the meaning of 'writing' see PARA 115 note 9 ante. For the meaning of 'information' see PARA 334 note 5 ante.

10 Police Reform Act 2002 Sch 3 para 7(2). As to notifications see PARA 344 ante.

11 Ibid Sch 3 para 7(3)(a). Where an application is made in respect of any complaint, the appropriate authority must not, while the application is being considered by the Commission, take any action in accordance with the provisions of Sch 3 (other than under Sch 3 para 1: see PARA 353 ante) in relation to that complaint: Sch 3 para 7(4).

12 Ibid Sch 3 para 7(3)(b). The Commission has power to review and, if it feels it appropriate, to revoke permission: see *R (on the application of Wilkinson) v Police Complaints Commission* [2004] EWHC 678 (Admin), [2004] All ER (D) 386 (Mar). See also *R (on the application of Clare) v Independent Police Complaints Commission* [2005] EWHC 1108 (Admin), [2005] All ER (D) 205 (Apr).

13 Ie by virtue of any of the provisions of the Police Reform Act 2002 Sch 3 (other than Sch 3 para 1: see PARA 353 ante).

14 Ibid Sch 3 para 7(5)(a).

15 Ibid Sch 3 para 7(5)(b).

16 Ie under ibid Sch 3 para 6(2): see PARA 356 ante.

17 Ibid Sch 3 para 7(6)(a).

18 Ibid Sch 3 para 7(6)(b).

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### **358. Local resolution of complaints.**

The arrangements made by the appropriate authority<sup>1</sup> for subjecting any complaint to local resolution<sup>2</sup> may include the appointment of a person who is serving with the police<sup>3</sup> and is under the direction and control of the chief officer of police<sup>4</sup> of the relevant force<sup>5</sup>, to secure the local resolution of the complaint<sup>6</sup>. The Secretary of State<sup>7</sup> may make provision by regulations as to the local resolution of complaints<sup>8</sup>.

The procedures that are to be available for dealing with a complaint which is to be subjected to local resolution are any procedures which are approved by the Independent Police Complaints Commission<sup>9</sup>. Where it appears to the appointed person<sup>10</sup> that the complaint had in fact already been satisfactorily dealt with at the time it was brought to his notice, he may, subject to any representation by the complainant, treat it as having been locally resolved<sup>11</sup>. The appointed person must as soon as practicable give the complainant and the person complained against an opportunity to comment on the complaint<sup>12</sup>. The appointed person must not, for the purpose of locally resolving a complaint, tender on behalf of the person complained against an apology for his conduct<sup>13</sup> unless the person complained against has admitted the conduct in question and has agreed to the apology<sup>14</sup>. Where the person complained against chooses not to comment on the complaint, the appointed person must record this fact in writing<sup>15</sup>. A statement made by any person for the purposes of the local resolution of any complaint is not admissible

in any subsequent criminal, civil or disciplinary proceedings<sup>16</sup> except to the extent that it consists of an admission relating to a matter that has not been subjected to local resolution<sup>17</sup>. Where a complaint has been dealt with by way of local resolution, a record must be made as soon as practicable of the outcome of the procedure; and the person complained against must be sent a copy of that record<sup>18</sup>.

If, after attempts have been made to resolve a complaint using local resolution, it appears to the appropriate authority that the resolution of the complaint in that manner is impossible<sup>19</sup>, or that the complaint is, for any other reason, not suitable for such resolution<sup>20</sup>, it must make arrangements for the complaint to be investigated by that authority on its own behalf<sup>21</sup>. The local resolution of any complaint must be discontinued if: (1) any such arrangements are made<sup>22</sup>; (2) the Commission notifies the appropriate authority that it requires the complaint to be referred<sup>23</sup> to it<sup>24</sup>; or (3) the complaint is so referred otherwise than in pursuance of such a notification<sup>25</sup>.

1 As to the determination by an appropriate authority as to whether a complaint is suitable for local resolution see PARA 356 ante. For the meaning of 'the appropriate authority' see PARA 337 note 14 ante. For the meaning of 'complaint' see PARA 329 ante.

2 'Local resolution', in relation to a complaint, means the handling of that complaint in accordance with a procedure which: (1) does not involve a formal investigation; and (2) is laid down by regulations under the Police Reform Act 2002 s 13, Sch 3 para 8 for complaints which it has been decided, in accordance with Sch 3 para 6 (see PARA 356 ante), to subject to local resolution: s 29(1). As to such regulations see note 8 and the text to notes 9-15, 18 infra.

3 Ibid Sch 3 para 8(1)(a). For the meaning of 'person serving with the police' see PARA 327 note 7 ante.

4 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

5 Police Reform Act 2002 Sch 3 para 8(1)(b). 'Relevant force', in relation to the appropriate authority, means: (1) if that authority is a police authority, the police force maintained by it; and (2) if that authority is the chief officer of police of a police force, his force: s 29(1). For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'police force' see PARA 102 note 11 ante.

6 Ibid Sch 3 para 8(1). A person who has participated in any attempt to resolve a complaint using local resolution is disqualified for appointment under any provision of Sch 3 to investigate that complaint, or to assist with the carrying out of the investigation of that complaint: Sch 3 para 8(6).

7 As to the Secretary of State see PARA 107 note 15 ante.

8 The Secretary of State may by regulations make provision: (1) for the different descriptions of procedures that are to be available for dealing with a complaint where it is decided it is to be subjected to local resolution (Police Reform Act 2002 Sch 3 para 8(2)(a)); (2) for requiring a person complained against in a case in which the complaint is subjected to local resolution to be given an opportunity of commenting, in such manner as may be provided for in the regulations, on the complaint (Sch 3 para 8(2)(b)); (3) for requiring that, on the making of an application in accordance with the regulations, a record of the outcome of any procedure for the local resolution of any complaint is to be given to the complainant (Sch 3 para 8(2)(c)). For the meaning of 'person complained against' see PARA 340 note 13 ante. For the meaning of 'complainant' see PARA 337 note 4 ante. As to such regulations see the text to notes 9-15, 18 infra. As to the making of regulations see PARA 346 ante.

9 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 4(1). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

10 'The appointed person' means a person appointed under the Police Reform Act 2002 Sch 3 para 8(1) (see the text to notes 1-6 supra) to secure the local resolution of a complaint: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 4(9).

11 Ibid reg 4(2).

12 Ibid reg 4(3).

13 For the meaning of 'conduct' see PARA 329 note 3 ante.

14 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 4(4).

- 15 Ibid reg 4(5). For the meaning of 'writing' see PARA 115 note 9 ante.
- 16 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.
- 17 Police Reform Act 2002 Sch 3 para 8(3).
- 18 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 4(6). A complainant is entitled to obtain a copy of that record from the appropriate authority if he applies for such a copy not later than the end of three months from the day on which: (1) the local resolution of his complaint was achieved (reg 4(7)(a)); or (2) for whatever other reason, it was determined that the complaint should no longer be subject to that procedure (reg 4(7)(b)). An appropriate authority must provide a copy of any such record as soon as practicable after it has received such an application: reg 4(8). For the meaning of 'month' see PARA 140 note 17 ante.
- 19 Police Reform Act 2002 Sch 3 para 8(4)(a).
- 20 Ibid Sch 3 para 8(4)(b).
- 21 Ibid Sch 3 para 8(4). As to such investigation see PARA 370 post.
- 22 Ibid Sch 3 para 8(5)(a).
- 23 Ie under ibid Sch 3 para 4: see PARA 354 ante.
- 24 Ibid Sch 3 para 8(5)(b).
- 25 Ibid Sch 3 para 8(5)(c).

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### **359. Appeals relating to local resolution.**

A complainant<sup>1</sup> whose complaint<sup>2</sup> has been subjected to local resolution<sup>3</sup> has a right of appeal to the Independent Police Complaints Commission<sup>4</sup> against the conduct of the local resolution of that complaint<sup>5</sup>. The only matter that may fall to be determined on such an appeal is whether there have been any contraventions of the procedural requirements relating to the local resolution of the complaint<sup>6</sup>. The Secretary of State<sup>7</sup> may make provision by regulations as to such appeals<sup>8</sup>.

Any appeal must be made within 28 days<sup>9</sup> of the date on which the alleged contravention of the procedural requirements occurred<sup>10</sup>. Where the Commission receives such an appeal it may request any information<sup>11</sup> from any person<sup>12</sup> which it considers necessary to dispose of the appeal<sup>13</sup>. It is the duty of the Commission to give both the person complained against<sup>14</sup> and the appropriate authority<sup>15</sup> an opportunity of making representations about the matters to which the appeal relates<sup>16</sup>.

The Commission must determine the outcome of the appeal as soon as practicable<sup>17</sup>. The Commission must determine whether there have been any contraventions of the procedural requirements relating to the local resolution of the complaint<sup>18</sup>. Where the Commission finds in the complainant's favour it must give such directions as it considers appropriate to the appropriate authority as to the future handling of the complaint<sup>19</sup>. The Commission must give notification<sup>20</sup> to the appropriate authority, to the complainant and to the person complained against of any determination made by it<sup>21</sup> and of the reasons for its determination<sup>22</sup>. The Commission must also give notification to the complainant and to the person complained against of any direction given by it to the appropriate authority as to the future handling of the complaint<sup>23</sup>.

- 1 For the meaning of 'complainant' see PARA 337 note 4 ante.
- 2 For the meaning of 'complaint' see PARA 329 ante.
- 3 For the meaning of 'local resolution' see PARA 358 note 2 ante.
- 4 As to the Independent Police Complaints Commission see PARA 316 et seq ante.
- 5 Police Reform Act 2002 s 13, Sch 3 para 9(1). This provision is expressed to be subject to Sch 3 para 9(2): see the text to note 6 infra.
- 6 Ibid Sch 3 para 9(2). As to such procedural requirements see PARA 358 ante.
- 7 As to the Secretary of State see PARA 107 note 15 ante.
- 8 The Secretary of State may by regulations make provision: (1) for the form and manner in which such appeals are to be brought (Police Reform Act 2002 Sch 3 para 9(7)(a)); (2) for the period within which any such appeal must be brought (Sch 3 para 9(7)(b)); and (3) for the procedure to be followed by the Commission when dealing with or disposing of any such appeal (Sch 3 para 9(7)(c)). As to such regulations see the text to notes 9-13, 17, 22-23 infra. As to the making of regulations see PARA 346 ante.
- 9 The Commission may extend this time period in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 9(9).
- 10 Ibid reg 9(1). The appeal must be made in writing and must state: (1) details of the complaint (reg 9(2)(a)); (2) the date on which the complaint was made (reg 9(2)(b)); (3) the grounds for the appeal (reg 9(2)(c)); and (4) the date on which the complainant was notified of the outcome of that local resolution (reg 9(2)(d)). Where the Commission receives an appeal which fails to comply with one or more of these requirements, it may decide to proceed as if those requirements had been complied with: reg 9(4). For the meaning of 'writing' see PARA 115 note 9 ante.
- 11 For the meaning of 'information' see PARA 334 note 5 ante.
- 12 For the meaning of 'person' see PARA 110 note 6 ante.
- 13 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 9(3). The appropriate authority must supply to the Commission any further information so requested of it: reg 9(5). For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.
- 14 Police Reform Act 2002 Sch 3 para 9(3)(a). For the meaning of 'person complained against' see PARA 340 note 13 ante.
- 15 Ibid Sch 3 para 9(3)(b).
- 16 Ibid Sch 3 para 9(3).
- 17 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 9(6).
- 18 Police Reform Act 2002 Sch 3 para 9(4).
- 19 Ibid Sch 3 para 9(5)(a). It is the duty of the appropriate authority to comply with any such directions: Sch 3 para 9(5)(b). Where the Commission determines that the future handling of the complaint should include an investigation, Sch 3 para 15 (see PARA 369 post) applies as it applies in the case of a determination mentioned in Sch 3 para 15(1): Sch 3 para 9(6).
- 20 As to the giving of notifications see PARA 344 ante.
- 21 Police Reform Act 2002 Sch 3 para 9(7)(a).
- 22 See the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 9(7).
- 23 Police Reform Act 2002 Sch 3 para 9(7)(b); Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 9(8).

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### **360. Withdrawn and discontinued complaints.**

If an appropriate authority<sup>1</sup> receives from a complainant<sup>2</sup> notification in writing<sup>3</sup> signed by him or by his solicitor or other authorised agent on his behalf to the effect either that he withdraws the complaint<sup>4</sup> or that he does not wish any further steps to be taken in consequence of the complaint<sup>5</sup>, then the appropriate authority must forthwith record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be, and the provisions of the Police Reform Act 2002<sup>6</sup> cease to apply in respect of that complaint<sup>7</sup>.

Where a complainant gives such notification to an appropriate authority, or where the appropriate authority receives a copy of a notification from the Independent Police Complaints Commission<sup>8</sup>, and it relates to a complaint: (1) which was referred to the Commission<sup>9</sup> and which has not been referred back<sup>10</sup> to the appropriate authority<sup>11</sup>; (2) which the appropriate authority knows is currently the subject of an appeal<sup>12</sup> to the Commission<sup>13</sup>; or (3) which was notified to the appropriate authority<sup>14</sup> by the Commission<sup>15</sup>, then the appropriate authority must notify the Commission that it has recorded the withdrawal of the complaint or the fact that the complainant does not wish any further steps to be taken, as the case may be<sup>16</sup>. Where a complainant gives a notification to an appropriate authority, or where the appropriate authority receives a copy of a notification<sup>17</sup>, and that notification relates to a complaint which does not fall within any of heads (1) to (3) above, then the appropriate authority must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter<sup>18</sup>.

In a case where: (a) a complaint has been subjected to an investigation by the appropriate authority on its own behalf<sup>19</sup>; (b) the complaint is currently subject to an appeal<sup>20</sup> to the Commission<sup>21</sup>; and (c) the appropriate authority has notified the Commission<sup>22</sup> that it has determined that the complaint is not to be treated as a recordable conduct matter<sup>23</sup>, the Commission must consider whether it is in the public interest for that determination to be reversed, and if so it must instruct the appropriate authority to reverse the decision<sup>24</sup>.

Where a complainant indicates that he wishes to withdraw the complaint or that he does not wish any further steps to be taken in consequence of the complaint, but he fails to provide a notification to that effect in writing signed by him or on his behalf, then in the case of an indication received by the appropriate authority, the authority must take the specified steps<sup>25</sup>, and in the case of an indication received by the Commission, the Commission must refer the matter to the appropriate authority for it to take those steps<sup>26</sup>. The specified steps are: (i) the appropriate authority must write to the complainant to ascertain whether he wishes to withdraw his complaint or does not wish any further steps to be taken in consequence of the complaint<sup>27</sup>; (ii) if the complainant indicates that he wishes to withdraw his complaint or does not wish any further steps to be taken in consequence of the complaint, or if he fails to reply within 21 days, the appropriate authority must treat the indication as though it had been received in writing signed by the complainant<sup>28</sup>; (iii) if the complainant indicates that he does not wish to withdraw his complaint, or that he does wish further steps to be taken in consequence of the complaint, the appropriate authority must start or resume the investigation as the case may be<sup>29</sup>.

The appropriate authority must notify the person complained against<sup>30</sup> if: (A) it records the withdrawal of a complaint or the fact that the complainant does not wish any further steps to be taken<sup>31</sup>; (B) it determines that a complaint must be treated as a recordable conduct matter<sup>32</sup>; (C) the Commission determines that a complaint must be treated as a recordable conduct matter<sup>33</sup>; (D) the Commission instructs it to reverse a decision not to treat a complaint as a recordable conduct matter<sup>34</sup>; (E) the provisions of the Police Reform Act 2002<sup>35</sup> cease to apply in

respect of a complaint<sup>36</sup>. However, the appropriate authority is not required to make a notification if it has previously decided<sup>37</sup> not to notify the person complained against of the complaint because it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest<sup>38</sup>.

1 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

2 For the meaning of 'complainant' see PARA 337 note 4 ante.

3 For the meaning of 'writing' see PARA 115 note 9 ante. As to the giving of notifications see PARA 344 ante.

4 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(1)(a). For the meaning of 'complaint' see PARA 329 ante.

5 Ibid reg 15(1)(b).

6 Ie subject to the provisions of ibid reg 15(2)-(12): see note 2 and the text to notes 8-38 infra. The provisions of the Police Reform Act 2002 referred to in the text are those of Pt 2 (ss 9-29) (as amended).

7 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(1). Where a complainant gives such notification to the Independent Police Complaints Commission but, so far as is apparent to the Commission, has not sent that notification to the appropriate authority, then: (1) the Commission must send a copy of the notification to the appropriate authority (reg 15(2)(a)); (2) that appropriate authority must record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be (reg 15(2)(b)); and (3) subject to the provisions of reg 15(3)-(12) (see the text and notes 8-38 infra), the provisions of the Police Reform Act 2002 Pt 2 (as amended) cease to apply in respect of that complaint (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(2)(c)). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

8 Ie under ibid reg 15(2): see note 7 supra.

9 Ie under the Police Reform Act 2002 s 13, Sch 3 para 4(1): see PARA 354 ante.

10 Ie under ibid Sch 3 para 5(2): see PARA 355 ante.

11 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(3)(a). See also note 16 infra.

12 Ie under the Police Reform Act 2002 Sch 3 para 3 (see PARA 352 ante), Sch 3 para 9 (see PARA 359 ante) or Sch 3 para 25 (see PARA 388 post).

13 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(3)(b). See also note 16 infra.

14 Ie under the Police Reform Act 2002 Sch 3 para 2(1): see PARA 351 ante.

15 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(3)(c). See also note 16 infra.

16 Ibid reg 15(3). In a case falling within reg 15(3)(a) (see head (1) in the text), the Commission must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter, and must notify the appropriate authority of its decision: reg 15(5). In a case falling within reg 15(3)(b) or (c) (see heads (2), (3) in the text), the appropriate authority must also: (1) determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter (reg 15(4)(a)); and (2) notify the Commission of its determination and the reasons for that determination (reg 15(4)(b)). Where a determination is made that a complaint is to be treated as a recordable conduct matter, then the provisions of the Police Reform Act 2002 Pt 2 (as amended) apply to that matter: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(6). For the meaning of 'recordable conduct matter' see PARA 362 note 19 post.

17 Ie under ibid reg 15(2): see note 7 supra.

18 Ibid reg 15(7)(a). If the complaint is to be treated as a recordable conduct matter, the provisions of the Police Reform Act 2002 Sch 3 paras 10-14 (see PARAS 361-365 post) apply to that matter: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(7)(b). If the complaint is not to be treated as a recordable conduct matter, the provisions of the Police Reform Act 2002 Pt 2 (as amended) cease to apply in respect of that complaint: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(7)(c).

19 Ibid reg 15(8)(a).

- 20    le under the Police Reform Act 2002 Sch 3 para 25: see PARA 388 post.
- 21    Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(8)(b).
- 22    le under ibid reg 15(4)(b): see note 16 supra.
- 23    Ibid reg 15(8)(c).
- 24    Ibid reg 15(8).
- 25    Ibid reg 15(9)(a).
- 26    See ibid reg 15(9)(b).
- 27    Ibid reg 15(10)(a).
- 28    Ibid reg 15(10)(b).
- 29    Ibid reg 15(10)(c).
- 30    For the meaning of 'person complained against' see PARA 340 note 13 ante.
- 31    Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(11)(a).
- 32    Ibid reg 15(11)(b).
- 33    Ibid reg 15(11)(c).
- 34    Ibid reg 15(11)(d).
- 35    le the provisions of the Police Reform Act 2002 Pt 2 (as amended).
- 36    Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 15(11)(e).
- 37    le under ibid reg 14(3): see PARA 351 ante.
- 38    Ibid reg 15(12).

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## (C) HANDLING OF CONDUCT MATTERS

### **361. Conduct matters arising in civil proceedings.**

Where:

- 207 (1)    a police authority<sup>1</sup> or chief officer<sup>2</sup> has received notification<sup>3</sup> that civil proceedings relating to any matter have been brought by a member of the public against that authority or chief officer, or it otherwise appears to a police authority or chief officer that such proceedings are likely to be so brought<sup>4</sup>; and
- 208 (2)    it appears to that authority or chief officer (whether at the time of the notification or at any time subsequently) that those proceedings involve or would involve a conduct matter<sup>5</sup>,

the authority or chief officer must consider whether it or, as the case may be, he is the appropriate authority<sup>6</sup> in relation to the conduct matter in question<sup>7</sup> and, if it or he is not, must

notify the person who is the appropriate authority about the proceedings, or the proposal to bring them, and about the circumstances that make it appear as mentioned in head (2) above<sup>8</sup>. Where a police authority or chief officer determines for these purposes that it or, as the case may be, he is the appropriate authority in relation to any conduct matter, it or he must record that matter<sup>9</sup>. However, the appropriate authority is not required to record any conduct matter if it is satisfied that the matter has been, or is already being, dealt with by means of criminal or disciplinary proceedings<sup>10</sup> against the person to whose conduct<sup>11</sup> the matter relates<sup>12</sup>.

The Secretary of State<sup>13</sup> may by regulations<sup>14</sup> provide for the times at which, or the periods within which, any requirement of these provisions is to be complied with; and the period from which any such period is to run must be such time as may be specified in those regulations or as may be determined in a manner set out in the regulations<sup>15</sup>.

1 For the meaning of 'police authority' see PARA 139 note 1 ante.

2 For the meaning of 'chief officer' see PARA 316 note 6 ante.

3 le whether or not under the Police Reform Act 2002 s 13, Sch 3 para 10.

4 Ibid Sch 3 para 10(1)(a).

5 Ibid Sch 3 para 10(1)(b). For these purposes, civil proceedings involve a conduct matter if: (1) they relate to such a matter (Sch 3 para 10(6)(a)); or (2) they are proceedings that relate to a matter in relation to which a conduct matter, or evidence of a conduct matter, is or may be relevant (Sch 3 para 10(6)(b)). For the meaning of 'conduct matter' see PARA 329 ante.

6 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

7 Police Reform Act 2002 Sch 3 para 10(2)(a).

8 Ibid Sch 3 para 10(2)(b).

9 Ibid Sch 3 para 10(3). Where the appropriate authority records any matter under Sch 3 para 10: (1) it must first determine whether the matter is one which it is required to refer to the Independent Police Complaints Commission under Sch 3 para 13 (see PARA 364 post) or is one which it would be appropriate to so refer (Sch 3 para 10(4)(a)); and (2) if it is not required so to refer the matter and does not do so, it may deal with the matter in such other manner (if any) as it may determine (Sch 3 para 10(4)(b)). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

10 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

11 For the meaning of 'conduct' see PARA 329 note 3 ante.

12 Police Reform Act 2002 Sch 3 para 10(5).

13 As to the Secretary of State see PARA 107 note 15 ante.

14 See note 15 infra. As to the making of regulations see PARA 346 ante.

15 Police Reform Act 2002 Sch 3 para 10(7). At the date at which this volume states the law no such regulations had been made.

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### **362. Recording of conduct matters in other cases.**



It is the duty of the appropriate authority<sup>1</sup> to record a conduct matter<sup>2</sup> where that matter comes<sup>3</sup> to the attention of the police authority<sup>4</sup> or chief officer<sup>5</sup> who is the appropriate authority in relation to that matter<sup>6</sup>, and it appears to the appropriate authority that the conduct<sup>7</sup> involved in that matter falls within the specified categories<sup>8</sup>. Conduct falls within the specified categories if (assuming it to have taken place): (1) it appears to have resulted in the death of any person or in serious injury<sup>9</sup> to any person<sup>10</sup>; (2) a member of the public has been adversely affected by it<sup>11</sup>; or (3) it is of a description specified for these purposes in regulations<sup>12</sup> made by the Secretary of State<sup>13</sup>. However, the appropriate authority is not required to record any conduct matter if it is satisfied that the matter has been, or is already being, dealt with by means of criminal or disciplinary proceedings<sup>14</sup> against the person to whose conduct the matter relates<sup>15</sup>.

Where the appropriate authority records any matter under these provisions it must first determine whether the matter is one which it is required to refer to the Independent Police Complaints Commission<sup>16</sup> or is one which it would be appropriate to so refer<sup>17</sup>; and if it is not required so to refer the matter and does not do so, it may deal with the matter in such other manner (if any) as it may determine<sup>18</sup>.

If it appears to the Commission that any matter that has come to its attention is a recordable conduct matter<sup>19</sup> but that that matter has not been recorded by the appropriate authority<sup>20</sup>, the Commission may direct the appropriate authority to record that matter; and it is the duty of that authority to comply with the direction<sup>21</sup>.

1 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

2 For the meaning of 'conduct matter' see PARA 329 ante.

3 Ie otherwise than as mentioned in the Police Reform Act 2002 s 13, Sch 3 para 10: see PARA 361 ante.

4 For the meaning of 'police authority' see PARA 139 note 1 ante.

5 For the meaning of 'chief officer' see PARA 316 note 6 ante.

6 Police Reform Act 2002 Sch 3 para 11(1)(a).

7 For the meaning of 'conduct' see PARA 329 note 3 ante.

8 Police Reform Act 2002 Sch 3 para 11(1)(b).

9 For the meaning of 'serious injury' see PARA 329 note 15 ante.

10 Police Reform Act 2002 Sch 3 para 11(2)(a).

11 Ibid Sch 3 para 11(2)(b). For the meaning of 'adversely affected' see PARA 329 note 8 ante.

12 See note 13 infra. As to the making of regulations see PARA 346 ante.

13 Police Reform Act 2002 Sch 3 para 11(2)(c). The following descriptions of conduct are specified: (1) a serious assault, as defined in guidance issued by the Independent Police Complaints Commission (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 5(1)(a)); (2) a serious sexual offence, as defined in such guidance (reg 5(1)(b)); (3) serious corruption, as defined in such guidance (reg 5(1)(c)); (4) a criminal offence or behaviour which is liable to lead to a disciplinary sanction and which was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in such guidance (reg 5(1)(d)); (5) a relevant offence (reg 5(1)(e) (substituted by SI 2005/3389)); (6) conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 5(1)(f)); or (7) conduct which is alleged to have taken place in the same incident as one in which conduct within heads (1)-(5) supra is alleged (reg 5(1)(g)). For the meaning of 'relevant offence' see PARA 354 note 6 ante. As to the Secretary of State see PARA 107 note 15 ante. As to the Independent Police Complaints Commission see PARA 316 et seq ante. As to the power of the Commission to issue guidance see PARA 345 ante.

14 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

- 15 Police Reform Act 2002 Sch 3 para 11(4).
- 16 Ie under ibid Sch 3 para 13: see PARA 364 post.
- 17 Ibid Sch 3 para 11(3)(a).
- 18 Ibid Sch 3 para 11(3)(b).
- 19 Ibid Sch 3 para 11(5)(a). 'Recordable conduct matter' means (subject to any regulations under s 23(2)(d): see PARA 346 ante): (1) a conduct matter that is required to be recorded by the appropriate authority under Sch 3 para 10 (see PARA 361 ante) or Sch 3 para 11 or has been so recorded; or (2) except in Sch 3 para 2(4), any matter brought to the attention of the appropriate authority under Sch 3 para 2(4) (see PARA 351 ante): s 29(1).
- 20 Ibid Sch 3 para 11(5)(b).
- 21 Ibid Sch 3 para 11(5).

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### **363. Duties to preserve evidence relating to conduct matters.**

Where a recordable conduct matter<sup>1</sup> that relates to the conduct<sup>2</sup> of a chief officer<sup>3</sup> comes to the attention of the police authority<sup>4</sup> maintaining his force, it is the duty of that authority to secure that all such steps as are appropriate<sup>5</sup> are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to that matter<sup>6</sup>. It is the duty of a police authority to comply with all such directions as may be given to it by the Independent Police Complaints Commission<sup>7</sup> in relation to the performance of this duty<sup>8</sup>.

Where a chief officer becomes aware of any recordable conduct matter relating to the conduct of a person under his direction and control, it is his duty to take all such steps as appear to him to be appropriate<sup>9</sup> for obtaining and preserving evidence relating to that matter<sup>10</sup>. This duty must be performed as soon as practicable after he becomes aware of the matter in question<sup>11</sup>. After that, he is under a duty, until he is satisfied that it is no longer necessary to do so, to continue to take the steps from time to time appearing to him to be appropriate<sup>12</sup> for obtaining and preserving evidence relating to the matter<sup>13</sup>. It is also the duty of the chief officer to take all such specific steps for obtaining or preserving evidence relating to any recordable conduct matter as he may be directed to take for these purposes by the police authority maintaining his force or by the Commission<sup>14</sup>.

- 1 For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.
- 2 For the meaning of 'conduct' see PARA 329 note 3 ante.
- 3 For the meaning of 'chief officer' see PARA 316 note 6 ante.
- 4 For the meaning of 'police authority' see PARA 139 note 1 ante.
- 5 Ie for the purposes of the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended).
- 6 Ibid s 13, Sch 3 para 12(1).
- 7 As to the Independent Police Complaints Commission see PARA 316 et seq ante.
- 8 See the Police Reform Act 2002 Sch 3 para 12(5).
- 9 Ie for the purposes of ibid Pt 2 (as amended).

- 10 Ibid Sch 3 para 12(2).
- 11 Ibid Sch 3 para 12(3).
- 12 Ie for the purposes of ibid Pt 2 (as amended).
- 13 Ibid Sch 3 para 12(4).
- 14 Ibid Sch 3 para 12(6).

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### **364. Reference of conduct matters to the Commission.**

It is the duty of a police authority<sup>1</sup> or a chief officer<sup>2</sup> to refer a recordable conduct matter<sup>3</sup> to the Independent Police Complaints Commission<sup>4</sup> if, in a case<sup>5</sup> in which the authority or chief officer is the appropriate authority<sup>6</sup>:

- 209 (1) that matter relates to any incident or circumstances in or in consequence of which any person has died or suffered serious injury<sup>7</sup>;
- 210 (2) that matter is of a description specified for these purposes in regulations<sup>8</sup> made by the Secretary of State<sup>9</sup>; or
- 211 (3) the Commission notifies the appropriate authority that it requires that matter to be referred to it for its consideration<sup>10</sup>.

In any case where there is no obligation under heads (1) to (3) above to make a reference, the appropriate authority may refer a recordable conduct matter to the Commission if that authority considers that it would be appropriate to do so by reason of the gravity of the matter<sup>11</sup> or any exceptional circumstances<sup>12</sup>. In a case in which a reference under this power or under heads (1) to (3) is neither made nor required to be made, a police authority maintaining any police force<sup>13</sup> may refer any recordable conduct matter to the Commission if it is one in relation to which the chief officer of police<sup>14</sup> of that force is the appropriate authority<sup>15</sup>, and the police authority considers that it would be appropriate to do so by reason of the gravity of the matter<sup>16</sup> or any exceptional circumstances<sup>17</sup>.

Where there is an obligation under these provisions to refer any matter to the Commission, it must be so referred within such period as may be provided for by regulations made by the Secretary of State<sup>18</sup>.

Generally<sup>19</sup>, the power of the Commission<sup>20</sup> to require a matter to be referred to it, and the power of a police authority or chief officer to refer<sup>21</sup> any matter to the Commission, are each exercisable at any time irrespective of whether the matter is already being investigated by any person<sup>22</sup> or has already been considered by the Commission<sup>23</sup>. Where a police authority or chief officer refers a matter to the Commission<sup>24</sup>, and that authority or chief officer does not consider that to do so might prejudice a possible future investigation of that matter<sup>25</sup>, that authority or chief officer must give a notification of the making of the reference to the person to whose conduct that matter relates<sup>26</sup>.

1 For the meaning of 'police authority' see PARA 139 note 1 ante.

- 2 For the meaning of 'chief officer' see PARA 316 note 6 ante.
- 3 For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.
- 4 As to the Independent Police Complaints Commission see PARA 316 et seq ante.
- 5 le whether or not falling within the Police Reform Act 2002 s 13, Sch 3 para 10: see PARA 361 ante.
- 6 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.
- 7 Police Reform Act 2002 Sch 3 para 13(1)(a). For the meaning of 'serious injury' see PARA 329 note 15 ante.
- 8 See note 9 infra. As to the making of regulations see PARA 346 ante.
- 9 Police Reform Act 2002 Sch 3 para 13(1)(b). The following descriptions of matter are specified: (1) a serious assault, as defined in guidance issued by the Independent Police Complaints Commission (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 5(1)(a), (2)); (2) a serious sexual offence, as defined in such guidance (reg 5(1)(b), (2)); (3) serious corruption, as defined in such guidance (reg 5(1)(c), (2)); (4) a criminal offence or behaviour which is liable to lead to a disciplinary sanction and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in such guidance (reg 5(1)(d), (2)); (5) a relevant offence (reg 5(1)(e), (2) (reg 5(1)(e) substituted by SI 2005/3389)); (6) conduct which is alleged to have taken place in the same incident as one in which conduct within heads (1)-(5) supra is alleged (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 5(1)(g), (2)). For the meaning of 'relevant offence' see PARA 354 note 6 ante. For the meaning of 'conduct' see PARA 329 note 3 ante. As to the Secretary of State see PARA 107 note 15 ante. As to the power of the Independent Police Complaints Commission to issue guidance see PARA 345 ante.
- 10 Police Reform Act 2002 Sch 3 para 13(1)(c).
- 11 Ibid Sch 3 para 13(2)(a).
- 12 Ibid Sch 3 para 13(2)(b).
- 13 For the meaning of 'police force' see PARA 102 note 11 ante.
- 14 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.
- 15 Police Reform Act 2002 Sch 3 para 13(3)(a).
- 16 Ibid Sch 3 para 13(3)(b)(i).
- 17 Ibid Sch 3 para 13(3)(b)(ii).
- 18 Ibid Sch 3 para 13(4). Any conduct matter which is required to be referred to the Commission must be referred in such manner as the Commission specifies and: (1) if the matter falls within Sch 3 para 13(1)(a) or (b) (see the text to notes 7-9 supra), not later than the end of the day following the day on which it first becomes clear to the appropriate authority that the conduct matter is one to which that provision applies (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 5(3)(a) (reg 5(3) amended by SI 2006/1406)); and (2) if the matter falls within the Police Reform Act 2002 Sch 3 para 13(1)(c) (see the text to note 10 supra), not later than the end of the day following the day on which the Commission notifies the appropriate authority that the conduct matter is to be referred (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 5(3)(b) (as so amended)). For the meaning of 'conduct matter' see PARA 329 ante.
- 19 However, a matter that has already been referred to the Commission under the Police Reform Act 2002 Sch 3 para 13 on a previous occasion: (1) is not required to be referred again under that provision unless the Commission so directs (Sch 3 para 13(7)(a)); and (2) must not be referred in exercise of any power conferred by that provision unless the Commission consents (Sch 3 para 13(7)(b)).
- 20 le by virtue of ibid Sch 3 para 13(1)(c): see the text to note 10 supra.
- 21 le under ibid Sch 3 para 13(2) or (3): see the text to notes 11-17 supra.
- 22 For the meaning of 'person' see PARA 110 note 6 ante.
- 23 Police Reform Act 2002 Sch 3 para 13(5).
- 24 Ibid Sch 3 para 13(6)(a).

25 Ibid Sch 3 para 13(6)(b).

26 Ibid Sch 3 para 13(6).

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### **365. Duties of Commission on references.**

It is the duty of the Independent Police Complaints Commission<sup>1</sup>, in the case of every recordable conduct matter<sup>2</sup> referred to it<sup>3</sup> by a police authority<sup>4</sup> or chief officer<sup>5</sup>, to determine whether or not it is necessary for the matter to be investigated<sup>6</sup>.

Where the Commission determines that it is not necessary for a recordable conduct matter to be investigated, it may if it thinks fit refer the matter back to the appropriate authority<sup>7</sup> to be dealt with by that authority in such manner (if any) as that authority may determine<sup>8</sup>. Where the Commission so refers a matter back to the appropriate authority<sup>9</sup>, and the Commission does not consider that to do so might prejudice a possible future investigation of that matter<sup>10</sup>, it must give a notification of the making of the reference to the person to whose conduct<sup>11</sup> that matter relates<sup>12</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.

3 Ie under the Police Reform Act 2002 s 13, Sch 3 para 13: see PARA 364 ante.

4 For the meaning of 'police authority' see PARA 139 note 1 ante.

5 For the meaning of 'chief officer' see PARA 316 note 6 ante.

6 Police Reform Act 2002 Sch 3 para 14(1). As to investigations see PARA 369 et seq post.

7 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

8 Police Reform Act 2002 Sch 3 para 14(2).

9 Ibid Sch 3 para 14(3)(a).

10 Ibid Sch 3 para 14(3)(b).

11 For the meaning of 'conduct' see PARA 329 note 3 ante.

12 Police Reform Act 2002 Sch 3 para 14(3)(a).

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### **(D) HANDLING OF DEATH OR SERIOUS INJURY MATTERS**

#### **366. Duty to record DSI matters.**

Where a DSI matter<sup>1</sup> comes to the attention of the police authority<sup>2</sup> or chief officer<sup>3</sup> who is the appropriate authority<sup>4</sup> in relation to that matter, it is the duty of the appropriate authority to record that matter<sup>5</sup>. If it appears to the Independent Police Complaints Commission<sup>6</sup> that any matter that has come to its attention is a DSI matter<sup>7</sup> but that that matter has not been recorded by the appropriate authority<sup>8</sup>, the Commission may direct the appropriate authority to record that matter; and it is the duty of that authority to comply with the direction<sup>9</sup>.

1 For the meaning of 'DSI matter' see PARA 329 ante.

2 For the meaning of 'police authority' see PARA 139 note 1 ante.

3 For the meaning of 'chief officer' see PARA 316 note 6 ante.

4 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

5 Police Reform Act 2002 s 13, Sch 3 para 14A(1) (Sch 3 para 14A added by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 12).

6 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

7 Police Reform Act 2002 Sch 3 para 14A(2)(a) (as added: see note 5 supra).

8 Ibid Sch 3 para 14A(2)(b) (as added: see note 5 supra).

9 Ibid Sch 3 para 14A(2) (as added: see note 5 supra).

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### **367. Duty to preserve evidence relating to DSI matters.**

Where a DSI matter<sup>1</sup> comes to the attention of a police authority<sup>2</sup>, and the relevant officer<sup>3</sup> in relation to that matter is the chief officer<sup>4</sup> of the force maintained by that authority<sup>5</sup>, it is the duty of that authority to secure that all such steps as are appropriate<sup>6</sup> are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to that matter<sup>7</sup>. It is the duty of a police authority to comply with all such directions as may be given to it by the Independent Police Complaints Commission<sup>8</sup> in relation to the performance of this duty<sup>9</sup>.

Where a chief officer becomes aware of a DSI matter<sup>10</sup>, and the relevant officer in relation to that matter is a person under his direction and control<sup>11</sup>, it is his duty to take all such steps as appear to him to be appropriate<sup>12</sup> for obtaining and preserving evidence relating to that matter<sup>13</sup>. This duty must be performed as soon as practicable after he becomes aware of the matter in question<sup>14</sup>. After that, he is under a duty, until he is satisfied that it is no longer necessary to do so, to continue to take the steps from time to time appearing to him to be appropriate for obtaining and preserving evidence relating to the matter<sup>15</sup>. It is also the duty of the chief officer to take all such specific steps for obtaining or preserving evidence relating to any DSI matter as he may be directed to take<sup>16</sup> by the police authority maintaining his force or by the Commission<sup>17</sup>.

1 For the meaning of 'DSI matter' see PARA 329 ante.

2 Police Reform Act 2002 s 13, Sch 3 para 14B(1)(a) (Sch 3 para 14B added by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 12). For the meaning of 'police authority' see PARA 139 note 1 ante.

- 3 For the meaning of 'the relevant officer' see PARA 332 note 3 ante.
- 4 For the meaning of 'chief officer' see PARA 316 note 6 ante.
- 5 Police Reform Act 2002 Sch 3 para 14B(1)(a) (as added: see note 2 supra).
- 6 le for the purposes of ibid Pt 2 (ss 9-29) (as amended).
- 7 Ibid Sch 3 para 14B(1) (as added: see note 2 supra).
- 8 As to the Independent Police Complaints Commission see PARA 316 et seq ante.
- 9 Police Reform Act 2002 Sch 3 para 14B(5) (as added: see note 2 supra).
- 10 Ibid Sch 3 para 14B(2)(a) (as added: see note 2 supra).
- 11 Ibid Sch 3 para 14B(2)(b) (as added: see note 2 supra).
- 12 le for the purposes of ibid Pt 2 (as amended).
- 13 Ibid Sch 3 para 14B(2) (as added: see note 2 supra).
- 14 Ibid Sch 3 para 14B(3) (as added: see note 2 supra).
- 15 Ibid Sch 3 para 14B(4) (as added: see note 2 supra).
- 16 le for the purposes of ibid Sch 3 para 14B (as added).
- 17 Ibid Sch 3 para 14B(6) (as added: see note 2 supra).

## UPDATE

### 367 Duty to preserve evidence relating to DSI matters

NOTE 17--See *R (on the application of Saunders) v Independent Police Complaints Commission*; *R (on the application of Tucker) v Independent Police Complaints Commission* [2008] EWHC 2372 (Admin), [2009] 1 All ER 379; and PARA 372.

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### 368. Reference of DSI matters to the Commission.

It is the duty of the appropriate authority<sup>1</sup> to refer a DSI matter<sup>2</sup> to the Independent Police Complaints Commission<sup>3</sup>. The appropriate authority must do so within such period as may be provided for by regulations<sup>4</sup> made by the Secretary of State<sup>5</sup>. A matter that has already been referred to the Commission under these provisions on a previous occasion is not required to be referred again under them unless the Commission so directs<sup>6</sup>.

It is the duty of the Commission, in the case of every DSI matter referred to it by a police authority<sup>7</sup> or a chief officer<sup>8</sup>, to determine whether or not it is necessary for the matter to be investigated<sup>9</sup>. Where the Commission determines that it is not necessary for a DSI matter to be investigated, it may if it thinks fit refer the matter back to the appropriate authority to be dealt with by that authority in such manner (if any) as that authority may determine<sup>10</sup>.

- 1 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.
- 2 For the meaning of 'DSI matter' see PARA 329 ante.
- 3 Police Reform Act 2002 s 13, Sch 3 para 14C(1) (Sch 3 paras 14C, 14D added by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 12). As to the Independent Police Complaints Commission see PARA 316 et seq ante.
- 4 See note 5 infra. As to the making of regulations see PARA 346 ante.
- 5 Police Reform Act 2002 Sch 3 para 14C(2) (as added: see note 3 supra). Any DSI matter which is required to be referred to the Commission must be referred in such manner as the Commission specifies and: (1) in a case where the Commission directs that the matter be referred to it, not later than the end of the day following the day on which the Commission so directs (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 5A(a) (reg 5A added by SI 2006/1406)); (2) in any other case, not later than the end of the day following the day on which the matter first comes to the attention of the appropriate authority (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 5A(b) (as so added)). As to the Secretary of State see PARA 107 note 15 ante.
- 6 Police Reform Act 2002 Sch 3 para 14C(3) (as added: see note 3 supra). See also note 5 supra.
- 7 For the meaning of 'police authority' see PARA 139 note 1 ante.
- 8 For the meaning of 'chief officer' see PARA 316 note 6 ante.
- 9 Police Reform Act 2002 Sch 3 para 14D(1) (as added: see note 3 supra). As to investigations see PARA 369 et seq post.
- 10 Ibid Sch 3 para 14D(2) (as added: see note 3 supra).

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## (E) INVESTIGATIONS AND SUBSEQUENT PROCEEDINGS

### **369. Power of the Commission to determine the form of an investigation.**

Where a complaint, recordable conduct matter or DSI matter<sup>1</sup> is referred to the Independent Police Complaints Commission<sup>2</sup> and the Commission determines that it is necessary for the complaint or matter to be investigated<sup>3</sup>, it is the duty of the Commission to determine the form which the investigation should take<sup>4</sup>. In making such a determination the Commission must have regard to the seriousness of the case<sup>5</sup> and the public interest<sup>6</sup>. The only forms which the investigation may take in accordance with such a determination are:

- 212 (1) an investigation by the appropriate authority on its own behalf<sup>7</sup>;
- 213 (2) an investigation by that authority under the supervision of the Commission<sup>8</sup>;
- 214 (3) an investigation by that authority under the management of the Commission<sup>9</sup>;
- 215 (4) an investigation by the Commission<sup>10</sup>.

The Commission may at any time make a further determination to replace an earlier one<sup>11</sup>. Where a determination replaces an earlier determination, or relates to a complaint or matter in relation to which the appropriate authority has already begun an investigation on its own behalf, the Commission may give the appropriate authority<sup>12</sup> and any person previously appointed to carry out the investigation<sup>13</sup> such directions as it considers appropriate for the



purpose of giving effect to the new determination<sup>14</sup>. It is the duty of a person to whom such a direction is given to comply with it<sup>15</sup>.

Where the Commission: (a) relinquishes the management of an investigation in favour of a supervised investigation or an investigation by the appropriate authority on its own behalf<sup>16</sup>; or (b) relinquishes the supervision of an investigation in favour of an investigation by the appropriate authority on its own behalf<sup>17</sup>, the Commission must notify the appropriate authority, the complainant<sup>18</sup>, any interested person<sup>19</sup> and the person complained against<sup>20</sup> of its decision, and the reasons for that decision<sup>21</sup>; and the Commission must send to the appropriate authority any documentation and evidence gathered during its investigations as will assist the appropriate authority to carry out its functions<sup>22</sup> in relation to matter<sup>23</sup>.

1 For the meanings of 'complaint', 'conduct matter' and 'DSI matter' see PARA 329 ante. For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.

2 Police Reform Act 2002 s 13, Sch 3 para 15(1)(a) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 13). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

3 Police Reform Act 2002 Sch 3 para 15(1)(b).

4 Ibid Sch 3 para 15(2). The Commission must notify the appropriate authority of any determination that it makes under Sch 3 para 15 (as amended) in relation to a particular complaint, recordable conduct matter or DSI matter: Sch 3 para 15(8) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 13). For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

5 Police Reform Act 2002 Sch 3 para 15(3)(a).

6 Ibid Sch 3 para 15(3)(b).

7 Ibid Sch 3 para 15(4)(a). As to such investigations see PARA 370 post.

8 Ibid Sch 3 para 15(4)(b). As to such investigations see PARA 371 post.

9 Ibid Sch 3 para 15(4)(c). As to such investigations see PARA 372 post.

10 Ibid Sch 3 para 15(4)(d). As to such investigations see PARA 374 post.

11 Ibid Sch 3 para 15(5). See also note 4 supra.

12 Ibid Sch 3 para 15(6)(a).

13 Ibid Sch 3 para 15(6)(b). As to persons appointed to carry out investigations see PARA 373 post.

14 Ibid Sch 3 para 15(6).

15 Ibid Sch 3 para 15(7).

16 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 20(1)(a).

17 Ibid reg 20(1)(b).

18 For the meaning of 'complainant' see PARA 337 note 4 ante.

19 For the meaning of 'interested person' see PARA 338 ante.

20 For the meaning of 'person complained against' see PARA 340 note 13 ante.

21 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 20(2)(a). Nothing in this provision requires the Commission to make a notification to the person complained against if it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest: reg 20(3).

22 Ie under the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended).

23 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 20(2)(b).

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### **370. Investigations by the appropriate authority on its own behalf.**

If the appropriate authority<sup>1</sup> is required:

- 216 (1) by virtue of any determination made<sup>2</sup> by that authority<sup>3</sup>, or any determination made<sup>4</sup> by the Independent Police Complaints Commission<sup>5</sup>, to make arrangements for a complaint, recordable conduct matter or DSI matter<sup>6</sup> to be investigated by the appropriate authority on its own behalf<sup>7</sup>; or
- 217 (2) to make a determination<sup>8</sup> in relation to any recordable conduct matter or in relation to<sup>9</sup> any DSI matter<sup>10</sup> and the appropriate authority determine that it is necessary for the matter to be investigated by the authority on its own behalf<sup>11</sup>,

it is the duty of the appropriate authority to appoint a person serving with the police<sup>12</sup> (whether under the direction and control of the chief officer of police<sup>13</sup> of the relevant force<sup>14</sup> or of the chief officer of another force)<sup>15</sup>, a member of the staff of the Serious Organised Crime Agency<sup>16</sup>, or a member of the staff of the National Policing Improvement Agency who is a constable<sup>17</sup>, to investigate the complaint or matter<sup>18</sup>.

The person appointed to investigate any complaint or conduct matter<sup>19</sup>: (a) in the case of an investigation relating to any conduct of a chief officer<sup>20</sup>, must not be a person under that chief officer's direction and control<sup>21</sup>; (b) in the case of an investigation relating to any conduct of the Metropolitan Police Commissioner or of the deputy metropolitan police commissioner<sup>22</sup>, must be the person nominated by the Secretary of State<sup>23</sup> for such appointment<sup>24</sup>. The person appointed to investigate any DSI matter: (i) in relation to which the relevant officer<sup>25</sup> is a chief officer, must not be a person under that chief officer's direction and control<sup>26</sup>; (ii) in relation to which the relevant officer is the Metropolitan Police Commissioner or the deputy metropolitan police commissioner, must be the person nominated by the Secretary of State for such appointment<sup>27</sup>.

An appropriate authority which is carrying out an investigation on its own behalf may, if it considers that it is more efficient and effective or is otherwise in the public interest to do so, combine that investigation with another such investigation or split that investigation into two or more such separate investigations<sup>28</sup>.

1 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

2 Ie under the Police Reform Act 2002 s 13, Sch 3 para 6(2) (see PARA 356 ante) (whether following the recording of a complaint or on a reference back under Sch 3 para 5(2) (see PARA 355 ante)) or under Sch 3 para 8(4) (see PARA 358 ante).

3 Ibid Sch 3 para 16(1)(a).

4 Ie under ibid Sch 3 para 15 (as amended): see PARA 369 ante.

5 Ibid Sch 3 para 16(1)(b). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

6 For the meanings of 'complaint', 'conduct matter' and 'DSI matter' see PARA 329 ante. For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.

7 Police Reform Act 2002 Sch 3 para 16(1) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 14(1), (2)).

8 Ie under the Police Reform Act 2002 Sch 13 para 10(4)(b) (see PARA 361 ante), Sch 13 para 11(3)(b) (see PARA 362 ante) or Sch 13 para 14(2) (see PARA 365 ante).

9 Ie under ibid Sch 13 para 14D(2) (as added): see PARA 368 ante.

10 Ibid Sch 3 para 16(2)(a) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 14(1), (3)).

11 Police Reform Act 2002 Sch 3 para 16(2)(b).

12 For the meaning of 'person serving with the police' see PARA 327 note 7 ante.

13 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

14 For the meaning of 'relevant force' see PARA 358 note 5 ante.

15 Police Reform Act 2002 Sch 3 para 16(3)(a).

16 Ibid Sch 3 para 16(3)(b) (substituted by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 11(1), (2)). As to the Serious Organised Crime Agency see PARA 430 et seq post.

17 Police Reform Act 2002 Sch 3 para 16(3)(c) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 80, 89(1), (2)). As to the National Policing Improvement Agency see PARA 223 ante. As to the office of constable see PARA 101 et seq ante.

18 Police Reform Act 2002 Sch 3 para 16(3) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 14(1), (4)). This provision is expressed to be subject to the Police Reform Act 2002 Sch 3 para 16(4), (5) (as added): see the text to notes 19-27 infra. As to the qualifications required of a person appointed to carry out an investigation see PARA 373 post. As to the duty of a police authority, a chief officer of police or the Director General of the Serious Organised Crime Agency to provide a member of the staff for appointment and to ensure that such person is given all necessary assistance and co-operation in carrying out an investigation see s 15(3), (5) (as amended); and PARA 331 ante. As to the duty of the National Policing Improvement Agency in such respect see s 16A (as added); and PARA 333 ante.

19 Ibid Sch 3 para 16(4) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 14(1), (5)).

20 For the meaning of 'chief officer' see PARA 316 note 6 ante.

21 Police Reform Act 2002 Sch 3 para 16(4)(a).

22 As to the Metropolitan Police Commissioner see PARA 183 ante; and as to the deputy metropolitan police commissioner see PARA 184 ante.

23 As to the Secretary of State see PARA 107 note 15 ante.

24 Police Reform Act 2002 Sch 3 para 16(4)(b).

25 For the meaning of 'the relevant officer' see PARA 332 note 3 ante.

26 Police Reform Act 2002 Sch 3 para 16(5)(a) (Sch 3 para 16(5) added by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 14(1), (6)).

27 Police Reform Act 2002 Sch 3 para 16(5)(b) (as added: see note 26 supra).

28 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 19(1)(a), (b). Nothing in reg 19(1) prevents the Independent Police Complaints Commission from determining that: (1) where an investigation is split into two or more separate investigations, those investigations may take different forms (reg 19(4)(a)); (2) two or more separate investigations which take different forms (including an investigation being carried out by the appropriate authority on its own behalf) may be combined into a single investigation (reg 19(4)(b)).

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### **371. Investigations supervised by the Commission.**

Where the Independent Police Complaints Commission<sup>1</sup> has determined that it should supervise the investigation by the appropriate authority<sup>2</sup> of any complaint, recordable conduct matter or DSI matter<sup>3</sup>, then, on being given notice of that determination, the appropriate authority must, if it has not already done so, appoint: (1) a person serving with the police<sup>4</sup> (whether under the direction and control of the chief officer of police<sup>5</sup> of the relevant force<sup>6</sup>, or of the chief officer of another force<sup>7</sup>); (2) a member of the staff of the Serious Organised Crime Agency<sup>8</sup>; or (3) a member of the staff of the National Policing Improvement Agency who is a constable<sup>9</sup>, to investigate the complaint or matter<sup>10</sup>.

The Commission may require that no such appointment is made unless it has given notice to the appropriate authority that it approves the person whom that authority proposes to appoint<sup>11</sup>. Where a person has already been appointed to investigate the complaint or matter, or is selected under this provision<sup>12</sup> for appointment, and the Commission is not satisfied with that person, the Commission may require the appropriate authority, as soon as reasonably practicable after being required to do so, to select another person falling within head (1), (2) or (3) above to investigate the complaint or matter<sup>13</sup> and to notify the Commission of the person selected<sup>14</sup>.

A person appointed under these provisions<sup>15</sup> to investigate any complaint or conduct matter<sup>16</sup>: (a) in the case of an investigation relating to any conduct of a chief officer<sup>17</sup>, must not be a person under that chief officer's direction and control<sup>18</sup>; and (b) in the case of an investigation relating to any conduct of the Metropolitan Police Commissioner or of the deputy metropolitan police commissioner<sup>19</sup>, must be the person nominated by the Secretary of State<sup>20</sup> for such appointment<sup>21</sup>. The person so appointed to investigate any DSI matter: (i) in relation to which the relevant officer<sup>22</sup> is a chief officer, must not be a person under that chief officer's direction and control<sup>23</sup>; (ii) in relation to which the relevant officer is the Metropolitan Police Commissioner or the deputy metropolitan police commissioner, must be the person nominated by the Secretary of State for such appointment<sup>24</sup>.

The person appointed to investigate the complaint or matter must comply with all such requirements in relation to the carrying out of that investigation as may, in accordance with regulations<sup>25</sup> made for these purposes by the Secretary of State, be imposed by the Commission in relation to that investigation<sup>26</sup>.

Where the Commission is supervising an investigation, it may, if it considers that it is more efficient and effective or is otherwise in the public interest to do so, combine that investigation with another investigation or split that investigation into two or more separate investigations<sup>27</sup>. However, the Commission must not take any such action except after consultation with the appropriate authority<sup>28</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

3 Police Reform Act 2002 s 13, Sch 3 para 17(1) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 15(1), (2)). For the meanings of 'complaint', 'conduct matter' and 'DSI matter' see PARA 329 ante. For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante. As to the power of the Commission to determine the form of an investigation see PARA 369 ante.

4 For the meaning of 'person serving with the police' see PARA 327 note 7 ante.

5 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

6 For the meaning of 'relevant force' see PARA 358 note 5 ante.

7 Police Reform Act 2002 Sch 3 para 17(2)(a).

8 Ibid Sch 3 para 17(2)(b) (substituted by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 11(1), (3)). As to the Serious Organised Crime Agency see PARA 430 et seq post.

9 Police Reform Act 2002 Sch 3 para 17(2)(c) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 80, 89(1), (3)). As to the National Policing Improvement Agency see PARA 223 ante. As to the office of constable see PARA 101 et seq ante.

10 Police Reform Act 2002 Sch 3 para 17(2). As to the qualifications required of a person appointed to carry out an investigation see PARA 373 post. As to the duty of a police authority, a chief officer of police or the Director General of the Serious Organised Crime Agency to provide a member of the staff for appointment and to ensure that such person is given all necessary assistance and co-operation in carrying out an investigation see s 15(3), (5) (as amended); and PARA 331 ante. As to the duty of the National Policing Improvement Agency in such respects see s 16A (as added); and PARA 333 ante.

11 Ibid Sch 3 para 17(3).

12 Ie under ibid Sch 3 para 17(4).

13 Ibid Sch 3 para 17(4)(a) (amended by the Police and Justice Act 2006 Sch 1 paras 80, 89(1), (4)).

14 Police Reform Act 2002 Sch 3 para 17(4)(b). Where a selection made in pursuance of such a requirement has been notified to the Commission, the appropriate authority must appoint that person to investigate the complaint or matter if, but only if, the Commission notifies the authority that it approves the appointment of that person: Sch 3 para 17(5).

15 Ie under ibid Sch 3 para 17 (as amended).

16 Ibid Sch 3 para 17(6) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 15(1), (3)).

17 For the meaning of 'chief officer' see PARA 316 note 6 ante.

18 Police Reform Act 2002 Sch 3 para 17(6)(a).

19 As to the Metropolitan Police Commissioner see PARA 183 ante; and as to the deputy metropolitan police commissioner see PARA 184 ante.

20 As to the Secretary of State see PARA 107 note 15 ante.

21 Police Reform Act 2002 Sch 3 para 17(6)(b).

22 For the meaning of 'the relevant officer' see PARA 332 note 3 ante.

23 Police Reform Act 2002 Sch 3 para 17(6A)(a) (Sch 3 para 17(6A) added by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 15(1), (4)).

24 Police Reform Act 2002 Sch 3 para 17(6A)(b) (as added: see note 23 supra).

25 See note 26 infra. As to the making of regulations see PARA 346 ante.

26 Police Reform Act 2002 Sch 3 para 17(7). The requirements which may be imposed by the Commission on a person appointed to investigate a complaint, recordable conduct matter or DSI matter are any reasonable requirements as to the conduct of the investigation as appear to it to be necessary: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 6(1) (reg 6(1), (2) amended by SI 2006/1406). However, where at any stage of an investigation of a complaint, recordable conduct matter or DSI matter the possibility of criminal proceedings arises, the Commission must not impose any requirement relating to the obtaining or preservation of evidence of a criminal offence without first obtaining the consent of the Director of Public Prosecutions to its imposition: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 6(2) (as so amended). Moreover, the Commission must not impose any requirement relating to the resources to be made available by a chief officer for the purposes of an investigation without first consulting him and having

regard to any representations he may make: reg 6(3). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

27 Ibid reg 19(2)(a), (b). Nothing in reg 19 prevents the Commission from determining that: (1) where an investigation is split into two or more separate investigations, those investigations may take different forms (reg 19(4)(a)); (2) two or more separate investigations which take different forms (including an investigation being carried out by the appropriate authority on its own behalf) may be combined into a single investigation (reg 19(4)(b)). As to investigations being carried out by an appropriate authority on its own behalf see PARA 370 ante.

28 Ibid reg 19(3).

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### **372. Investigations managed by the Commission.**

Where the Independent Police Complaints Commission<sup>1</sup> has determined that it should manage the investigation by the appropriate authority<sup>2</sup> of any complaint, recordable conduct matter or DSI matter<sup>3</sup>, the provisions relating to investigations supervised by the Commission<sup>4</sup> apply as they apply in the case of an investigation which the Commission has determined is one that it should supervise<sup>5</sup>. The person appointed to investigate the complaint or matter is, in relation to that investigation, under the direction and control of the Commission<sup>6</sup>.

Where the Commission is managing an investigation, it may, if it considers that it is more efficient and effective or is otherwise in the public interest to do so, combine that investigation with another investigation or split that investigation into two or more separate investigations<sup>7</sup>. However, the Commission must not take any such action except after consultation with the appropriate authority<sup>8</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

3 Police Reform Act 2002 s 13, Sch 3 para 18(1) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 16(1), (2)). For the meanings of 'complaint', 'conduct matter' and 'DSI matter' see PARA 329 ante. For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante. As to the power of the Commission to determine the form of an investigation see PARA 369 ante.

4 Ie the provisions of the Police Reform Act 2002 Sch 3 para 17(2)-(6A) (as added): see PARA 371 ante.

5 Ibid Sch 3 para 18(2) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 16(1), (3)).

6 Police Reform Act 2002 Sch 3 para 18(3). As to the qualifications required of a person appointed to carry out an investigation see PARA 373 post.

7 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 19(2)(a), (b). Nothing in reg 19 prevents the Commission from determining that: (1) where an investigation is split into two or more separate investigations, those investigations may take different forms (reg 19(4)(a)); (2) two or more separate investigations which take different forms (including an investigation being carried out by the appropriate authority on its own behalf) may be combined into a single investigation (reg 19(4)(b)). As to investigations being carried out by an appropriate authority on its own behalf see PARA 370 ante.

8 Ibid reg 19(3).

### **UPDATE**

### 372 Investigations managed by the Commission

NOTE 5--Maintaining the effectiveness of its independent investigation can be regarded as the Commission's overriding objective: see *R (on the application of Saunders) v Independent Police Complaints Commission*; *R (on the application of Tucker) v Independent Police Complaints Commission* [2008] EWHC 2372 (Admin), [2009] 1 All ER 379 (Commission had no duty to give direction prohibiting police officers from conferring: more likely to hinder than promote effective investigation in view of risk of withdrawal of their co-operation).

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#### 373. Appointment of persons to carry out investigations.

No person may be appointed to carry out an investigation<sup>1</sup>:

- 218 (1) unless he has an appropriate level of knowledge, skills and experience to plan and conduct the investigation and to manage the resources that will be required during that process<sup>2</sup>;
- 219 (2) if he has any social, financial or other connection, whether or not within the work environment, with the person whose conduct<sup>3</sup> is being investigated which could, on an objective appraisal of the material facts, give rise to a legitimate fear as to whether that investigation can be carried out impartially<sup>4</sup>;
- 220 (3) if he works, directly or indirectly, under the management of the person whose conduct is being investigated<sup>5</sup>;
- 221 (4) in a case where the person who is the subject of the investigation is a senior police officer<sup>6</sup> and is a member of a force other than the metropolitan police force<sup>7</sup>, if he is a member of the same force as that person<sup>8</sup>.

No member of a police force<sup>9</sup> may be appointed to carry out an investigation<sup>10</sup> in a case where the person who is the subject of the investigation is also a member of a police force, unless the officer so appointed is:

- 222 (a) of at least the rank of sergeant<sup>11</sup>;
- 223 (b) if the officer under investigation is a superintendent or chief superintendent and:
- 31 48. (i) if the investigating officer is a member of the City of London or metropolitan police force, of at least the rank of commander<sup>12</sup>;
- 49. (ii) if the investigating officer is a member of any other force, of at least the rank of assistant chief constable<sup>13</sup>;
- 32 224 (c) of at least the same rank as the officer concerned<sup>14</sup>.

1. ie an investigation under the Police Reform Act 2002 s 13, Sch 3 para 16, 17 or 18 (as amended): see PARAS 370-372 ante.

- 2 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 18(1)(a).
- 3 For the meaning of 'conduct' see PARA 329 note 3 ante.
- 4 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 18(1)(b).
- 5 Ibid reg 18(1)(c).
- 6 'Senior police officer' means a chief constable, a deputy chief constable or an assistant chief constable or, in the case of the City of London police force, a member of that force of or above the rank of commander: ibid reg 18(3)(a). Any reference to an officer of a particular rank includes a reference to a special constable of an equivalent rank or grade: reg 18(3)(c). As to chief constables see PARA 179 ante; as to deputy chief constables see PARA 180 ante; and as to assistant chief constables see PARA 181 ante. As to ranks in the City of London police force see PARA 230 ante. As to special constables see PARAS 108-112 ante.
- 7 As to the metropolitan police force see PARA 137 ante.
- 8 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 18(1)(d).
- 9 Any reference (other than in ibid reg 18(1)(d): see the text to notes 6-8 supra) to a member of a police force includes a reference to a special constable: reg 18(3)(b). Any reference to an officer of a particular rank includes a reference to a special constable of an equivalent rank or grade: reg 18(3)(c). For the meaning of 'police force' see PARA 102 note 11 ante.
- 10 I.e. an investigation under the Police Reform Act 2002 s 13, Sch 3 para 16, 17 or 18 (as amended): see PARAS 370-372 ante.
- 11 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 18(2)(a). As to ranks see PARA 230 ante.
- 12 Ibid reg 18(2)(b)(i).
- 13 Ibid reg 18(2)(b)(ii).
- 14 Ibid reg 18(2)(c).

## UPDATE

### 373 Appointment of persons to carry out investigations

TEXT AND NOTES--SI 2004/643 reg 18 amended: SI 2008/2866.

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### 374. Investigations by the Commission itself.

Where the Independent Police Complaints Commission<sup>1</sup> has determined that it should itself carry out the investigation of a complaint, recordable conduct matter or DSI matter<sup>2</sup>, it must designate<sup>3</sup> both a member of its staff to take charge of the investigation on its behalf<sup>4</sup>, and all such other members of its staff as are required by it to assist him<sup>5</sup>.

The person designated under these provisions to be the person to take charge of an investigation relating to any conduct<sup>6</sup> of the Metropolitan Police Commissioner or of the deputy metropolitan police commissioner<sup>7</sup> must be the person nominated by the Secretary of State to be so designated<sup>8</sup>. The person designated under these provisions to be the person to take charge of an investigation of a DSI matter in relation to which the relevant officer<sup>9</sup> is the



Metropolitan Police Commissioner or the deputy metropolitan police commissioner must be the person nominated by the Secretary of State to be so designated<sup>10</sup>.

Where the Commission is carrying out an investigation, it may, if it considers that it is more efficient and effective or is otherwise in the public interest to do so, combine that investigation with another investigation or split that investigation into two or more separate investigations<sup>11</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 Police Reform Act 2002 s 13, Sch 3 para 19(1) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 17(1), (2)). For the meanings of 'complaint', 'conduct matter' and 'DSI matter' see PARA 329 ante. For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante. As to the power of the Commission to determine the form of an investigation see PARA 369 ante.

3 A member of the Commission's staff who is so designated in relation to any investigation but does not already, by virtue of the Police Act 1996 s 97(8) (see PARA 428 post), have all the powers and privileges of a constable throughout England and Wales and the adjacent United Kingdom waters, has, for the purposes of the carrying out of the investigation and all purposes connected with it, all those powers and privileges throughout England and Wales and those waters: Police Reform Act 2002 Sch 3 para 19(4). A member of the Commission's staff who is not a constable is not, as a result of Sch 3 para 19(4), to be treated as being in police service for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992 s 280 (person in police service excluded from definitions of 'worker' and 'employee': see EMPLOYMENT vol 40 (2009) PARA 847) or the Employment Rights Act 1996 s 200 (certain provisions of that Act not to apply to persons in police service: see EMPLOYMENT vol 39 (2009) PARA 141): Police Reform Act 2002 Sch 3 para 19(5). References to the powers and privileges of a constable: (1) are references to any power or privilege conferred by or under any enactment (including one passed after 24 July 2002, ie the date of the passing of the Police Reform Act 2002) on a constable (Sch 3 para 19(7)(a)); and (2) have effect as if every such power were exercisable, and every such privilege existed, throughout England and Wales and the adjacent United Kingdom waters (whether or not that is the case apart from this provision) (Sch 3 para 19(7)(b)). 'United Kingdom waters' means the sea and other waters within the seaward limits of the United Kingdom's territorial sea: Sch 3 para 19(8). As to the Commission's staff see PARA 322 ante. As to the office of constable see PARA 101 et seq ante. For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante. For the meaning of 'United Kingdom' see PARA 102 note 7 ante. As to the United Kingdom's territorial sea see WATER AND WATERWAYS vol 100 (2009) PARA 31.

The Secretary of State may by order provide that such provisions of the Police and Criminal Evidence Act 1984 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE) relating to investigations of offences conducted by police officers as may be specified in the order apply, subject to such modifications as may be so specified, to investigations of offences conducted by virtue of the Police Reform Act 2002 Sch 3 para 19 (as amended) by members of the Commission's staff designated under Sch 3 para 19(2): Sch 3 para 19(6). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 107 note 15 ante. As to the making of orders see PARA 346 ante. As to the application of these provisions see *R (on the application of Guardian Newspapers Ltd) v Middlesex Crown Court* [2005] EWHC 2216 (Admin).

4 Police Reform Act 2002 Sch 3 para 19(2)(a).

5 Ibid Sch 3 para 19(2)(b). As to the duty of chief officers of police and police authorities to allow access to police premises and documents to persons nominated by the Commission see s 18; and PARA 335 ante.

6 For the meaning of 'conduct' see PARA 329 note 3 ante.

7 As to the Metropolitan Police Commissioner see PARA 183 ante; and as to the deputy metropolitan police commissioner see PARA 184 ante.

8 Police Reform Act 2002 Sch 3 para 19(3).

9 For the meaning of 'the relevant officer' see PARA 332 note 3 ante.

10 Police Reform Act 2002 Sch 3 para 19(3A) (added by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 17(1), (3)).

11 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 19(2)(a), (b). Nothing in reg 19 prevents the Commission from determining that: (1) where an investigation is split into two or more separate investigations, those investigations may take different forms (reg 19(4)(a)); (2) two or more separate investigations which take different forms (including an investigation being carried out by the appropriate authority on its own behalf) may be combined into a single investigation (reg 19(4)(b)). As to investigations being carried out by an appropriate authority on its own behalf see PARA 370 ante.

## UPDATE

### 374 Investigations by the Commission itself

TEXT AND NOTES--See also Police Reform Act 2002 Sch 3 paras 19A-19E (added by Criminal Justice and Immigration Act 2008 Sch 23 para 5) (special procedure where investigation relates to police officer or special constable). For savings see SI 2008/2993.

NOTE 2--To conduct a proper investigation into death or serious injury in police custody, it may be necessary to evaluate evidence relating to another potential cause of death or injury which occurred before contact with the police: *R (on the application of Reynolds) v Independent Police Complaints Commission* [2008] EWCA Civ 1160, [2009] 3 All ER 237.

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### 375. Restrictions on proceedings pending the conclusion of an investigation.

No criminal or disciplinary proceedings<sup>1</sup> may be brought in relation to any matter which is the subject of an investigation<sup>2</sup> until: (1) the appropriate authority<sup>3</sup> has certified the case<sup>4</sup> as a special case<sup>5</sup>; or (2) a report on that investigation has been submitted<sup>6</sup> to the Independent Police Complaints Commission<sup>7</sup> or to the appropriate authority<sup>8</sup>.

Nothing in these provisions prevents the bringing of criminal or disciplinary proceedings in respect of any conduct<sup>9</sup> at any time after the discontinuance of the investigation<sup>10</sup> which relates to that conduct<sup>11</sup>. The restrictions imposed by these provisions in relation to the bringing of criminal proceedings do not apply to the bringing of criminal proceedings by the Director of Public Prosecutions in any case in which it appears to him that there are exceptional circumstances which make it undesirable to delay the bringing of such proceedings<sup>12</sup>.

1 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

2 Ie in accordance with the provisions of the Police Reform Act 2002 s 13, Sch 3 (as amended).

3 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

4 Ie under the Police Reform Act 2002 Sch 3 para 20B(3) (as added) (see PARA 377 post) or Sch 3 para 20E(3) (as added) (see PARA 379 post).

5 Ibid Sch 3 para 20(1)(a) (substituted by the Serious Organised Crime and Police Act 2005 s 159, Sch 11 paras 1, 2(a)).

6 Ie under the Police Reform Act 2002 Sch 3 para 22 (see PARA 384 post) or Sch 3 para 24A (as added) (see PARA 387 post).

7 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

8 Police Reform Act 2002 Sch 3 para 20(1)(b) (renumbered by the Serious Organised Crime and Police Act 2005 Sch 11 paras 1, 2(b); and amended by s 160, Sch 12 paras 1, 11, 18).

9 For the meaning of 'conduct' see PARA 329 note 3 ante.

10 le in accordance with the provisions of the Police Reform Act 2002 Sch 3 (as amended). As to the power of the Commission to discontinue an investigation see PARA 382 post.

11 Ibid Sch 3 para 20(2).

12 Ibid Sch 3 para 20(3). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

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### **376. Accelerated procedure in special cases.**

If, at any time before the completion of his investigation, a person appointed or designated to investigate a complaint or recordable conduct matter<sup>1</sup> believes that the appropriate authority<sup>2</sup> would, on consideration of the matter, be likely to consider that the special conditions are satisfied, he must proceed in accordance with the following provisions<sup>3</sup>. The special conditions are that:

- 225 (1) the person whose conduct<sup>4</sup> is the subject matter of the investigation may have committed an imprisonable offence<sup>5</sup> and that person's conduct is of a serious nature<sup>6</sup>;
- 226 (2) there is sufficient evidence, in the form of written<sup>7</sup> statements or other documents<sup>8</sup>, to establish on the balance of probabilities that conduct justifying dismissal took place<sup>9</sup>; and
- 227 (3) it is in the public interest for the person whose conduct is the subject matter of the investigation to cease to be a member of a police force<sup>10</sup> or a special constable<sup>11</sup> without delay<sup>12</sup>.

If the person was appointed<sup>13</sup> in respect of an investigation by the appropriate authority on its own behalf, he must submit to the appropriate authority a statement of his belief and the grounds for it<sup>14</sup> and a written report on his investigation to that point<sup>15</sup>. If the person was appointed<sup>16</sup> in respect of an investigation supervised or managed by the Independent Police Complaints Commission or designated<sup>17</sup> in respect of an investigation conducted by the Commission itself, he must submit to the appropriate authority a statement of his belief and the grounds for it<sup>18</sup> and a written report on his investigation to that point<sup>19</sup>, and must send a copy of the statement and the report to the Commission<sup>20</sup>.

A person submitting a report under these provisions is not prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in his report as he thinks fit<sup>21</sup>. A statement and report may be submitted whether or not a previous statement and report have been submitted; but a second or subsequent statement and report may be submitted only if the person submitting them has grounds to believe that the appropriate authority will reach a different determination<sup>22</sup> following their submission<sup>23</sup>.

After submitting a report under these provisions, the person appointed or designated to investigate the complaint or recordable conduct matter must continue his investigation to such extent as he considers appropriate<sup>24</sup>.

1 For the meanings of 'complaint' and 'conduct matter' see PARA 329 ante. For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.

- 2 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.
- 3 Police Reform Act 2002 s 13, Sch 3 para 20A(1) (Sch 3 para 20A added by the Serious Organised Crime and Police Act 2005 s 159, Sch 11 paras 1, 3).
- 4 For the meaning of 'conduct' see PARA 329 note 3 ante.
- 5 'Imprisonable offence' means an offence which is punishable with imprisonment in the case of a person aged 21 or over: Police Reform Act 2002 Sch 3 para 20A(8)(a) (as added: see note 3 supra).
- 6 Ibid Sch 3 para 20A(7)(a) (as added: see note 3 supra).
- 7 For the meaning of 'written' see PARA 115 note 9 ante.
- 8 For the meaning of 'document' see PARA 334 note 5 ante.
- 9 Police Reform Act 2002 Sch 3 para 20A(7)(b) (as added: see note 3 supra). 'Conduct justifying dismissal' means conduct which is so serious that disciplinary proceedings brought in respect of it would be likely to result in a dismissal: Sch 3 para 20A(8)(b) (as so added). For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante. As to proof on the balance of probabilities see CIVIL PROCEDURE vol 11 (2009) PARA 775.
- 10 For the meaning of 'police force' see PARA 102 note 11 ante.
- 11 As to special constables see PARAS 108-112 ante.
- 12 Police Reform Act 2002 Sch 3 para 20A(7)(c) (as added: see note 3 supra).
- 13 Ie under ibid Sch 3 para 16 (as amended): see PARA 370 ante.
- 14 Ibid Sch 3 para 20A(2)(a) (as added: see note 3 supra).
- 15 Ibid Sch 3 para 20A(2)(b) (as added: see note 3 supra). If he was appointed following a determination made by the Independent Police Complaints Commission under Sch 3 para 15 (as amended) (see PARA 369 ante), he must also send a copy of the statement and the report to the Commission: Sch 3 para 20A(2) (as so added). As to the Independent Police Complaints Commission see PARA 316 et seq ante.
- 16 Ie under ibid Sch 3 para 17 (as amended) or Sch 3 para 18 (as amended): see PARAS 371-372 ante.
- 17 Ie under ibid Sch 3 para 19 (as amended): see PARA 374 ante.
- 18 Ibid Sch 3 para 20A(3)(a) (as added: see note 3 supra).
- 19 Ibid Sch 3 para 20A(3)(b) (as added: see note 3 supra).
- 20 Ibid Sch 3 para 20A(3) (as added: see note 3 supra).
- 21 Ibid Sch 3 para 20A(4) (as added: see note 3 supra). As to the law relating to confidence and data protection see CONFIDENCE AND DATA PROTECTION.
- 22 Ie under ibid Sch 3 para 20B(2) (as added) (see PARA 377 post) or Sch 3 para 20E(2) (as added) (see PARA 379 post).
- 23 Ibid Sch 3 para 20A(5) (as added: see note 3 supra).
- 24 Ibid Sch 3 para 20A(6) (as added: see note 3 supra).

## UPDATE

### 376 Accelerated procedure in special cases

TEXT AND NOTES--Police Reform Act 2002 Sch 3 para 20A amended and repealed in part: Criminal Justice and Immigration Act 2008 Sch 23 para 6, Sch 28 Pt 8. For savings see SI 2008/2993.

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### **377. Action by appropriate authority in relation to special cases.**

Where: (1) a statement and special report<sup>1</sup> on an investigation carried out under the management of the Independent Police Complaints Commission<sup>2</sup>; or (2) a statement and special report on an investigation carried out by a person designated by the Commission<sup>3</sup>, are submitted<sup>4</sup> to the appropriate authority<sup>5</sup>, that authority must determine whether the special conditions<sup>6</sup> are satisfied<sup>7</sup>.

If the appropriate authority determines that the special conditions are satisfied<sup>8</sup> then, unless it considers that the circumstances are such as to make it inappropriate to do so, it must certify the case as a special case for the purposes of the Police (Conduct) Regulations 2004<sup>9</sup> and, subject to any request made by the Director of Public Prosecutions<sup>10</sup>, take such steps as are required by those regulations<sup>11</sup> in relation to a case so certified<sup>12</sup>. If the appropriate authority determines that the special conditions are not satisfied<sup>13</sup>, or that, although those conditions are satisfied, the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings<sup>14</sup>, it must submit to the Commission a memorandum<sup>15</sup> which: (a) notifies the Commission of its determination that those conditions are not satisfied or (as the case may be) that they are so satisfied but the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings<sup>16</sup>; and (b) (in either case) sets out its reasons for so determining<sup>17</sup>.

1 'Special report' means a report submitted under the Police Reform Act 2002 s 13, Sch 3 para 20A (as added) (see PARA 376 ante): Sch 3 para 20A(9) (Sch 3 paras 20A, 20B added by the Serious Organised Crime and Police Act 2005 s 159, Sch 11 paras 1, 3).

2 Police Reform Act 2002 Sch 3 para 20B(1)(a) (as added: see note 1 supra). As to such investigations see PARA 372 ante. As to the Independent Police Complaints Commission see PARA 316 et seq ante.

3 Ibid Sch 3 para 20B(1)(b) (as added: see note 1 supra). As to such investigations see PARA 374 ante.

4 Ie under ibid Sch 3 para 20A(3) (as added): see PARA 376 ante.

5 Ibid Sch 3 para 20B(1) (as added: see note 1 supra). For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

6 'Special conditions' has the meaning given by ibid Sch 3 para 20A(7) (as added) (see PARA 376 ante): Sch 3 para 20B(9) (as added: see note 1 supra).

7 Ibid Sch 3 para 20B(2) (as added: see note 1 supra).

8 If the appropriate authority determines that the special conditions are satisfied then it must notify the Director of Public Prosecutions of its determination and send him a copy of the special report: ibid Sch 3 para 20B(5) (as added: see note 1 supra). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

9 Ibid Sch 3 para 20B(3)(a) (as added: see note 1 supra). The text refers to certification of the case as a special case for the purposes of the Police (Conduct) Regulations 2004, SI 2004/645, reg 11 (see PARA 255 ante): Police Reform Act 2002 Sch 3 para 20B(3)(a) (as so added). The reference to the Police (Conduct) Regulations 2004, SI 2004/645, reg 11 includes a reference to any corresponding provision replacing that regulation: Police Reform Act 2002 Sch 3 para 20B(4) (as so added).

10 Ie under ibid Sch 3 para 20G(1) (as added): see PARA 380 post.

11 Ie by the Police (Conduct) Regulations 2004, SI 2004/645, reg 11: see PARA 255 ante.

12 Police Reform Act 2002 Sch 3 para 20B(3)(b) (as added: see note 1 supra). The appropriate authority must notify the Commission of such a certification: Sch 3 para 20B(6) (as so added).

13 Ibid Sch 3 para 20B(7)(a) (as added: see note 1 supra).

14 Ibid Sch 3 para 20B(7)(b) (as added: see note 1 supra). For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

15 Ibid Sch 3 para 20B(7) (as added: see note 1 supra).

16 Ibid Sch 3 para 20B(8)(a) (as added: see note 1 supra).

17 Ibid Sch 3 para 20B(8)(b) (as added: see note 1 supra).

## UPDATE

### 377 Action by appropriate authority in relation to special cases

TEXT AND NOTES 8, 9, 12--Police Reform Act 2002 Sch 3 para 20B(3), (4) substituted, Sch 3 para 20B(5) repealed: Criminal Justice and Immigration Act 2008 Sch 23 para 7, Sch 28 Pt 8. For savings see SI 2008/2993.

NOTES 9, 11--SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### 378. Action by Commission in relation to special cases.

On receipt of a notification<sup>1</sup> from an appropriate authority<sup>2</sup> certifying a case as a special case, the Independent Police Complaints Commission<sup>3</sup> must give a notification: (1) in the case of a complaint<sup>4</sup>, to the complainant<sup>5</sup> and to every person entitled to be kept properly informed<sup>6</sup> in relation to the complaint<sup>7</sup>; and (2) in the case of a recordable conduct matter<sup>8</sup>, to every person entitled to be kept properly informed<sup>9</sup> in relation to that matter<sup>10</sup>. The notification to be given by the Commission must set out the findings of the special report<sup>11</sup>, the appropriate authority's determination<sup>12</sup> in relation thereto<sup>13</sup>, and the action that the appropriate authority is required to take as a consequence of that determination<sup>14</sup>.

On receipt of a memorandum from an appropriate authority<sup>15</sup> concerning its determination in relation to a special case, the Commission must: (a) consider the memorandum<sup>16</sup>; (b) determine, in the light of that consideration, whether or not to make a recommendation<sup>17</sup> that the case should be certified as a special case<sup>18</sup>; and (c) if it thinks fit to do so, make such a recommendation<sup>19</sup>. If the Commission determines not to make such a recommendation, it must notify the appropriate authority and the person appointed<sup>20</sup> or designated<sup>21</sup> to investigate the case of its determination<sup>22</sup>.

1 ie under the Police Reform Act 2002 s 13, Sch 3 para 20B(6) (as added): see PARA 377 ante.

2 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

3 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

4 For the meaning of 'complaint' see PARA 329 ante.

- 5 For the meaning of 'complainant' see PARA 337 note 4 ante.
- 6 Ie under the Police Reform Act 2002 s 21: see PARA 338 ante.
- 7 Police Reform Act 2002 Sch 3 para 20C(1)(a) (Sch 3 paras 20C, 20D added by the Serious Organised Crime and Police Act 2005 s 159, Sch 11 paras 1, 3). The provisions of the Police Reform Act 2002 s 20(5)-(7) (relating to the making of regulations: see PARA 337 ante) have effect in relation to the duties imposed on the Commission by Sch 3 para 20C(1) (as added) as they have effect in relation to the duties imposed on the Commission by s 20: Sch 3 para 20C(3) (as so added). At the date at which this volume states the law no regulations had been made for these purposes.
- 8 For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.
- 9 Ie under the Police Reform Act 2002 s 21: see PARA 338 ante.
- 10 Ibid Sch 3 para 20C(1)(b) (as added: see note 7 supra). See also note 7 supra.
- 11 Ibid Sch 3 para 20C(2)(a) (as added: see note 7 supra). Except so far as may be otherwise provided by regulations made by virtue of Sch 3 para 20C(3) (as added) (see note 7 supra), the Commission is entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person notification of the findings of the special report by sending that person a copy of that report: Sch 3 para 20C(4) (as so added). For the meaning of 'special report' see PARA 377 note 1 ante. As to the law relating to confidence and data protection see CONFIDENCE AND DATA PROTECTION.
- 12 Ie under ibid Sch 3 para 20B(2) (as added): see PARA 377 ante.
- 13 Ibid Sch 3 para 20C(2)(b) (as added: see note 7 supra).
- 14 Ibid Sch 3 para 20C(2)(c) (as added: see note 7 supra).
- 15 Ie under ibid Sch 3 para 20B(7) (as added): see PARA 377 ante.
- 16 Ibid Sch 3 para 20D(1)(a) (as added: see note 7 supra).
- 17 Ie under ibid Sch 3 para 20H (as added): see PARA 381 post.
- 18 Ibid Sch 3 para 20D(1)(b) (as added: see note 7 supra).
- 19 Ibid Sch 3 para 20D(1)(c) (as added: see note 7 supra).
- 20 Ie under ibid Sch 3 para 18 (as amended): see PARA 372 ante.
- 21 Ie under ibid Sch 3 para 19 (as amended): see PARA 374 ante.
- 22 Ibid Sch 3 para 20D(2) (as added: see note 7 supra).

## **UPDATE**

### **378 Action by Commission in relation to special cases**

TEXT AND NOTE 22--Police Reform Act 2002 Sch 3 para 20D(2) amended: Criminal Justice and Immigration Act 2008 Sch 23 para 8. For savings see SI 2008/2993.

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### **379. Action by appropriate authority in relation to other investigations involving special cases.**

Where: (1) a statement and a special report<sup>1</sup> on an investigation carried out by an appropriate authority<sup>2</sup> on its own behalf<sup>3</sup>; or (2) a statement and a special report on an investigation carried out under the supervision of the Independent Police Complaints Commission<sup>4</sup>, are submitted<sup>5</sup> to the appropriate authority<sup>6</sup>, the appropriate authority must determine whether the special conditions are satisfied<sup>7</sup>.

If the appropriate authority determines that the special conditions are satisfied<sup>8</sup> then, unless it considers that the circumstances are such as to make it inappropriate to do so, it must certify the case as a special case for the purposes of the Police (Conduct) Regulations 2004<sup>9</sup> and, subject to any request made by the Director of Public Prosecutions<sup>10</sup>, take such steps as are required by those regulations<sup>11</sup> in relation to a case so certified<sup>12</sup>. If the appropriate authority determines that the special conditions are not satisfied<sup>13</sup>, or that, although those conditions are satisfied, the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings<sup>14</sup>, it must notify the person appointed<sup>15</sup> to carry out the investigation of its determination<sup>16</sup>.

If the appropriate authority certifies a case under the above provisions<sup>17</sup>, it must give a notification: (a) in the case of a complaint<sup>18</sup>, to the complainant<sup>19</sup> and to every person entitled<sup>20</sup> to be kept properly informed in relation to the complaint<sup>21</sup>; and (b) in the case of a recordable conduct matter<sup>22</sup>, to every person entitled<sup>23</sup> to be kept properly informed in relation to that matter<sup>24</sup>. The notification must set out the findings of the report<sup>25</sup>, the authority's determination<sup>26</sup> in relation thereto<sup>27</sup>, and the action that the authority is required to take in consequence of that determination<sup>28</sup>.

1 For the meaning of 'special report' see PARA 377 note 1 ante.

2 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

3 Police Reform Act 2002 s 13, Sch 3 para 20E(1)(a) (Sch 3 paras 20E, 20F added by the Serious Organised Crime and Police Act 2005 s 159, Sch 11 paras 1, 3). As to such investigations see PARA 370 ante.

4 Police Reform Act 2002 Sch 3 para 20E(1)(b) (as added: see note 3 supra). As to such investigations see PARA 371 ante. As to the Independent Police Complaints Commission see PARA 316 et seq ante.

5 *Ie* under *ibid* Sch 3 para 20A(2) or (3) (as added): see PARA 376 ante.

6 *Ibid* Sch 3 para 20E(1) (as added: see note 3 supra).

7 *Ibid* Sch 3 para 20E(2) (as added: see note 3 supra). 'Special conditions' has the meaning given by Sch 3 para 20A(7) (as added): see PARA 376 ante.

8 If the appropriate authority determines that the special conditions are satisfied then it must notify the Director of Public Prosecutions of its determination and send him a copy of the special report: *ibid* Sch 3 para 20E(5) (as added: see note 3 supra). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

9 *Ibid* Sch 3 para 20E(3)(a) (as added: see note 3 supra). The text refers to certification of the case as a special case for the purposes of the Police (Conduct) Regulations 2004, SI 2004/645, reg 11 (see PARA 255 ante): Police Reform Act 2002 Sch 3 para 20E(3)(a) (as so added). The reference to the Police (Conduct) Regulations 2004, SI 2004/645, reg 11 includes a reference to any corresponding provision replacing that regulation: Police Reform Act 2002 Sch 3 para 20E(4) (as so added).

10 *Ie* under *ibid* Sch 3 para 20G(1) (as added): see PARA 380 post.

11 *Ie* the Police (Conduct) Regulations 2004, SI 2004/645, reg 11: see PARA 255 ante.

12 Police Reform Act 2002 Sch 3 para 20E(3)(b) (as added: see note 3 supra). Where the statement and report were required under Sch 3 para 20A(2) (as added) (see PARA 376 ante) to be copied to the Independent Police Complaints Commission, the appropriate authority must notify the Commission of such a certification: Sch 3 para 20E(6) (as so added).

13 *Ibid* Sch 3 para 20E(7)(a) (as added: see note 3 supra).



- 14 Ibid Sch 3 para 20E(7)(b) (as added: see note 3 supra). For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.
- 15 Ie under ibid Sch 3 para 16 (as amended) or Sch 3 para 17 (as amended): see PARAS 370-371 ante.
- 16 Ibid Sch 3 para 20E(7) (as added: see note 3 supra).
- 17 Ie under ibid Sch 3 para 20E(3) (as added): see the text to notes 8-12 supra.
- 18 For the meaning of 'complaint' see PARA 329 ante.
- 19 For the meaning of 'complainant' see PARA 337 note 4 ante.
- 20 Ie under the Police Reform Act 2002 s 21: see PARA 338 ante.
- 21 Ibid Sch 3 para 20F(1)(a) (as added: see note 3 supra). The provisions of s 20(5)-(7) (relating to the making of regulations: see PARA 337 ante) have effect in relation to the duties imposed on the appropriate authority by Sch 3 para 20F(1) (as added) as they have effect in relation to the duties imposed on the appropriate authority by s 20: Sch 3 para 20F(3) (as so added). Except so far as may be otherwise provided by regulations made by virtue of Sch 3 para 20F(3) (as added), the appropriate authority is entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in Sch 3 para 20F(1) (as added) notification of the findings of the special report by sending that person a copy of that report: Sch 3 para 20F(4) (as so added). At the date at which this volume states the law no regulations had been made for these purposes. As to the law relating to confidence and data protection see CONFIDENCE AND DATA PROTECTION.
- 22 For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.
- 23 Ie under the Police Reform Act 2002 s 21: see PARA 338 ante.
- 24 Ibid Sch 3 para 20F(1)(b) (as added: see note 3 supra). See also note 21 supra.
- 25 Ibid Sch 3 para 20F(2)(a) (as added: see note 3 supra).
- 26 Ie under ibid Sch 3 para 20E(2) (as added): see the text to note 7 supra.
- 27 Ibid Sch 3 para 20F(2)(b) (as added: see note 3 supra).
- 28 Ibid Sch 3 para 20F(2)(c) (as added: see note 3 supra).

## UPDATE

### **379 Action by appropriate authority in relation to other investigations involving special cases**

TEXT AND NOTES 8, 9, 12, 16--Police Reform Act 2002 Sch 3 para 20E(3), (4) substituted, Sch 3 para 20E(7) amended, Sch 3 para 20E(5) repealed: Criminal Justice and Immigration Act 2008 Sch 23 para 9, Sch 28 Pt 8. For savings see SI 2008/2993.

NOTES 9, 11--SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

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### **380. Action by Director of Public Prosecutions in relation to special cases.**

On receiving a copy of a special report<sup>1</sup>, the Director of Public Prosecutions<sup>2</sup> may request the appropriate authority<sup>3</sup> not to bring disciplinary proceedings<sup>4</sup> without his prior agreement, if the

Director considers that bringing such proceedings might prejudice any future criminal proceedings<sup>5</sup>. The Director of Public Prosecutions must notify the appropriate authority of any decision of his to take, or not to take, action in respect of the matters dealt with in such a special report copied to him<sup>6</sup>.

It is the duty of the Independent Police Complaints Commission<sup>7</sup>, or the appropriate authority<sup>8</sup>, to notify the specified persons if criminal proceedings are brought against any person by the Director of Public Prosecutions in respect of any matters dealt with in a special report copied to him<sup>9</sup>. The specified persons are: (1) in the case of a complaint<sup>10</sup>, the complainant<sup>11</sup> and every person entitled to be kept properly informed<sup>12</sup> in relation to the complaint<sup>13</sup>; and (2) in the case of a recordable conduct matter<sup>14</sup>, every person entitled to be kept properly informed<sup>15</sup> in relation to that matter<sup>16</sup>.

1     Ie under the Police Reform Act 2002 s 13, Sch 3 para 20B(5) (as added) (see PARA 377 ante) or Sch 3 para 20E(5) (as added) (see PARA 379 ante). For the meaning of 'special report' see PARA 377 note 1 ante.

2     As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

3     For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

4     For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

5     Police Reform Act 2002 Sch 3 para 20G(1) (Sch 3 para 20G added by the Serious Organised Crime and Police Act 2005 s 159, Sch 11 paras 1, 3).

6     Police Reform Act 2002 Sch 3 para 20G(2)(a) (as added: see note 5 supra). Where the special report was copied to the Director of Public Prosecutions under Sch 3 para 20B(5) (as added) (see PARA 377 ante), he must send a copy of that notification to the Independent Police Complaints Commission: Sch 3 para 20G(2)(b) (as added). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

7     Ie in the case of a special report copied to the Director of Public Prosecutions under ibid Sch 3 para 20B(5) (as added): see PARA 377 ante.

8     Ie in the case of a special report copied to the Director of Public Prosecutions under ibid Sch 3 para 20E(5) (as added): see PARA 379 ante.

9     See ibid Sch 3 para 20G(3), (4) (as added: see note 5 supra).

10    For the meaning of 'complaint' see PARA 329 ante.

11    For the meaning of 'complainant' see PARA 337 note 4 ante.

12    Ie under the Police Reform Act 2002 s 21: see PARA 338 ante.

13    Ibid Sch 3 para 20G(5)(a) (as added: see note 5 supra).

14    For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.

15    Ie under the Police Reform Act 2002 s 21: see PARA 338 ante.

16    Ibid Sch 3 para 20G(5)(b) (as added: see note 5 supra).

## UPDATE

### 380 Action by Director of Public Prosecutions in relation to special cases

TEXT AND NOTES--Police Reform Act 2002 Sch 3 para 20G repealed: Criminal Justice and Immigration Act 2008 Sch 23 para 10, Sch 28 Pt 8. For savings see SI 2008/2993.

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### **381. Recommendation or direction of Commission in relation to special cases.**

Where the appropriate authority<sup>1</sup> has submitted, or is required to submit, a memorandum to the Independent Police Complaints Commission<sup>2</sup>, the Commission may make a recommendation to the appropriate authority that it should certify the case<sup>3</sup> as a special case<sup>4</sup>. If the Commission determines to make such a recommendation, it must give a notification: (1) in the case of a complaint<sup>5</sup>, to the complainant<sup>6</sup> and to every person entitled to be kept properly informed<sup>7</sup> in relation to the complaint<sup>8</sup>; and (2) in the case of a recordable conduct matter<sup>9</sup>, to every person entitled to be kept properly informed<sup>10</sup> in relation to that matter<sup>11</sup>. The notification must set out the findings of the special report<sup>12</sup> and the Commission's recommendation<sup>13</sup>.

It is the duty of the appropriate authority to notify the Commission whether it accepts the recommendation and (if it does) to certify the case and proceed accordingly<sup>14</sup>. If, after the Commission has made a recommendation, the appropriate authority does not certify the case<sup>15</sup> the Commission may direct the appropriate authority so to certify it<sup>16</sup>; and it is the duty of the appropriate authority to comply with the direction and proceed accordingly<sup>17</sup>. The appropriate authority must keep the Commission informed of whatever action it takes in response to a recommendation or direction<sup>18</sup>.

Where in the case of an investigation of a complaint the appropriate authority notifies the Commission that it does not accept the recommendation made by the Commission<sup>19</sup>, or it fails to certify the case<sup>20</sup> and to proceed accordingly<sup>21</sup>, it is the duty of the Commission to determine what (if any) further steps<sup>22</sup> to take<sup>23</sup>. It is the duty of the Commission to notify the complainant and every person entitled to be kept properly informed<sup>24</sup> in relation to the complaint of any such determination not to take further steps<sup>25</sup> and, where it determines to take further steps, of the outcome of the taking of those steps<sup>26</sup>.

1 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

2 Ie under the Police Reform Act 2002 s 13, Sch 3 para 20B(7) (as added): see PARA 377 ante. As to the Independent Police Complaints Commission see PARA 316 et seq ante.

3 Ie under ibid Sch 3 para 20B(3) (as added): see PARA 377 ante.

4 Ibid Sch 3 para 20H(1) (Sch 3 paras 20H, 20I added by the Serious Organised Crime and Police Act 2005 s 159, Sch 11 paras 1, 3).

5 For the meaning of 'complaint' see PARA 329 ante.

6 For the meaning of 'complainant' see PARA 337 note 4 ante.

7 Ie under the Police Reform Act 2002 s 21: see PARA 338 ante.

8 Ibid Sch 3 para 20H(2)(a) (as added: see note 4 supra). The provisions of s 20(5)-(7) (relating to the making of regulations: see PARA 337 ante) have effect in relation to the duties imposed on the Commission by Sch 3 para 20H(2) (as added) as they have effect in relation to the duties imposed on the Commission by s 20: Sch 3 para 20H(4) (as so added). Except so far as may be otherwise provided by regulations made by virtue of Sch 3 para 20H(4) (as added), the Commission is entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in Sch 3 para 20H(2) (as added) notification of the findings of the special report by sending that person a copy of the report: Sch 3 para 20H(5) (as so added). At the date at which this volume states the law no regulations had been made for these purposes. For the meaning of 'special report' see PARA 377 note 1 ante. As to the law relating to confidence and data protection see CONFIDENCE AND DATA PROTECTION.

9 For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.

- 10    Ie under the Police Reform Act 2002 s 21: see PARA 338 ante.
- 11    Ibid Sch 3 para 20H(2)(b) (as added: see note 4 supra). See also note 8 supra.
- 12    Ibid Sch 3 para 20H(3)(a) (as added: see note 4 supra).
- 13    Ibid Sch 3 para 20H(3)(b) (as added: see note 4 supra).
- 14    Ibid Sch 3 para 20H(6) (as added: see note 4 supra). Where the Commission makes a recommendation in the case of an investigation of a complaint (Sch 3 para 20I(1)(a) (as so added)), and the appropriate authority notifies the Commission that the recommendation has been accepted (Sch 3 para 20I(1)(b) (as so added)), the Commission must notify the complainant and every person entitled to be kept properly informed in relation to the complaint under s 21 (see PARA 338 ante) of that fact and of the steps that have been, or are to be, taken by the appropriate authority to give effect to it (Sch 3 para 20I(1) (as so added)).
- 15    Ie under ibid Sch 3 para 20B(3) (as added): see PARA 377 ante.
- 16    Ibid Sch 3 para 20H(7)(a) (as added: see note 4 supra). Where the Commission gives the appropriate authority such a direction, it must supply the appropriate authority with a statement of its reasons for doing so: Sch 3 para 20H(8) (as so added). The Commission may at any time withdraw such a direction: Sch 3 para 20H(9) (as so added).
- 17    Ibid Sch 3 para 20H(7)(b) (as added: see note 4 supra).
- 18    Ibid Sch 3 para 20H(10) (as added: see note 4 supra).
- 19    Ibid Sch 3 para 20I(2)(a) (as added: see note 4 supra).
- 20    Ie under ibid Sch 3 para 20B(3) (as added): see PARA 377 ante.
- 21    Ibid Sch 3 para 20I(2)(b) (as added: see note 4 supra).
- 22    Ie under ibid Sch 3 para 20H (as added): see the text to notes 1-18 supra.
- 23    Ibid Sch 3 para 20I(2) (as added: see note 4 supra).
- 24    Ie under ibid s 21: see PARA 338 ante.
- 25    Ibid Sch 3 para 20I(3)(a) (as added: see note 4 supra).
- 26    Ibid Sch 3 para 20I(3)(b) (as added: see note 4 supra).

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### **382. Power of the Commission to discontinue an investigation.**

If at any time appears to the Independent Police Complaints Commission<sup>1</sup> (whether on an application by the appropriate authority<sup>2</sup> or otherwise<sup>3</sup>) that a complaint<sup>4</sup> or matter that is being investigated by the appropriate authority on its own behalf<sup>5</sup>, or under the supervision or management of the Commission<sup>6</sup>, is of a description of complaint or matter specified in regulations<sup>7</sup> made by the Secretary of State<sup>8</sup> for these purposes, the Commission may by order require the discontinuance of the investigation<sup>9</sup>. The Commission must not discontinue any investigation that is being carried out<sup>10</sup> by the Commission itself except in such cases as may be authorised by regulations made by the Secretary of State<sup>11</sup>.

Where the Commission makes an order requiring the discontinuance of an investigation or discontinues an investigation being carried out by itself, it must give notification of the

discontinuance to the appropriate authority<sup>12</sup>, to every person entitled to be kept properly informed<sup>13</sup> in relation to the subject matter of the investigation<sup>14</sup>, and in a case where the investigation that is discontinued is an investigation of a complaint, to the complainant<sup>15</sup>.

Where an investigation of a complaint, recordable conduct matter<sup>16</sup> or DSI matter is discontinued in accordance with these provisions: (1) the Commission may give the appropriate authority directions to do any such things as it is authorised to direct by regulations made by the Secretary of State<sup>17</sup>; (2) the Commission may itself take any such steps of a description specified in regulations so made as it considers appropriate for purposes connected with the discontinuance of the investigation<sup>18</sup>; and (3) neither the appropriate authority nor the Commission may take<sup>19</sup> any further action in accordance with the statutory provisions<sup>20</sup> in relation to that complaint or matter<sup>21</sup>. The appropriate authority must comply with any such directions given to it<sup>22</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 Any application by an appropriate authority to the Commission for an order that it discontinue an investigation must be in writing and must be accompanied by: (1) a copy of the complaint (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 7(4)(a)); and (2) a memorandum from the appropriate authority containing a summary of the investigation undertaken so far and explaining the reasons for the application to discontinue the investigation (reg 7(4)(b)). The appropriate authority must: (a) send the complainant a copy of any such application on the same day as the day on which the application is sent to the Commission (reg 7(5)(a)); (b) supply any further information requested by the Commission for the purpose of considering that application (reg 7(5)(b)). For the meaning of 'the appropriate authority' see PARA 337 note 14 ante. For the meaning of 'writing' see PARA 115 note 9 ante. For the meaning of 'complainant' see PARA 337 note 4 ante.

3 The Commission may not require the discontinuance of an investigation in a case where there has been no application to do so by the appropriate authority unless it has consulted with that authority: *ibid* reg 7(6).

4 For the meaning of 'complaint' see PARA 329 ante.

5 Police Reform Act 2002 s 13, Sch 3 para 21(1)(a). As to such investigations see PARA 370 ante.

6 *Ibid* Sch 3 para 21(1)(b). As to such investigations see PARAS 371-372 ante.

7 As to the making of regulations see PARA 346 ante.

8 As to the Secretary of State see PARA 107 note 15 ante.

9 Police Reform Act 2002 Sch 3 para 21(1). The descriptions of complaint or matter specified are any complaint or matter: (1) in which the complainant refuses to co-operate to the extent that the Commission considers that it is not reasonably practicable to continue the investigation (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 7(1), (2)(a)); (2) which the complainant has agreed may be subjected to local resolution (reg 7(1), (2)(b)); (3) which the Commission considers is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints, conduct matters or DSI matters (reg 7(1), (2)(c) (reg 7(2) (c) amended by SI 2006/1406)); (4) which is repetitious as defined in the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 3(3) (see PARA 357 note 7 ante) (reg 7(1), (2)(d)); or (5) which the Commission otherwise considers is such as to make it not reasonably practicable to proceed with the investigation (reg 7(1), (2)(e)). For the meaning of 'local resolution' see PARA 358 note 2 ante. For the meanings of 'conduct matter' and 'DSI matter' see PARA 329 ante.

10 *Ie* in accordance with the Police Reform Act 2002 Sch 3 para 19 (as amended): see PARA 374 ante.

11 *Ibid* Sch 3 para 21(2). For these purposes, the cases in which the Commission is authorised to discontinue an investigation are any cases where the complaint, conduct matter or DSI matter under investigation falls within the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 7(2) (as amended) (see note 9 *supra*): reg 7(3) (amended by SI 2006/1406).

12 Police Reform Act 2002 Sch 3 para 21(3)(a).

13 *Ie* under *ibid* s 21: see PARA 338 ante.

14 *Ibid* Sch 3 para 21(3)(b).

15 Ibid Sch 3 para 21(3)(c).

16 For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.

17 Police Reform Act 2002 Sch 3 para 21(4)(a) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 19). Such a direction given to an appropriate authority by the Commission may: (1) require the appropriate authority to produce an investigation report on the discontinued investigation under the Police Reform Act 2002 Sch 3 para 22 (see PARA 384 post) and to take any subsequent steps under Sch 3 (as amended) (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 7(7)(a)); (2) where the investigation concerned a complaint, require the appropriate authority to dispense with the requirements of the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended) as respects that complaint (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 7(7)(b)); (3) in a case within reg 7(1)(b), require the appropriate authority to subject the complaint to local resolution (reg 7(7)(c)); (4) direct the appropriate authority to handle the matter in whatever manner (if any) that authority thinks fit (reg 7(7)(d)). Note, in relation to head (3) supra, that there is no reg 7(1)(b); it is submitted that this is intended to be a reference to reg 7(2)(b) (see note 9 head (2) supra).

18 Police Reform Act 2002 Sch 3 para 21(4)(b). The steps specified for these purposes are: (1) to produce an investigation report on the discontinued investigation and take any subsequent steps under Sch 3 (as amended) (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 7(8), (9)(a)); (2) where the investigation concerned a complaint, to dispense with the requirements of the Police Reform Act 2002 Pt 2 (as amended) as respects that complaint (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 7(8), (9)(b)); (3) to handle the matter in whatever manner it thinks fit (reg 7(8), (9)(c)).

19 Ie subject to the Police Reform Act 2002 Sch 3 para 21(1)-(3) (as amended): see the text to notes 1-15 supra.

20 Ie the provisions of ibid Sch 3 (as amended).

21 Ibid Sch 3 para 21(4)(c).

22 Ibid Sch 3 para 21(5).

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### **383. Procedure where conduct matter is revealed during investigation of DSI matter.**

If during the course of an investigation of a DSI matter<sup>1</sup> it appears to a person appointed to conduct an investigation managed by the Independent Police Complaints Commission<sup>2</sup>, or designated as the person in charge of an investigation by the Commission itself<sup>3</sup>, that there is an indication that a person serving with the police<sup>4</sup> may have committed a criminal offence<sup>5</sup>, or behaved in a manner which would justify the bringing of disciplinary proceedings<sup>6</sup>, he must make a submission to that effect to the Commission<sup>7</sup>. If, after considering such a submission, the Commission determines that there is such an indication, it must notify the appropriate authority<sup>8</sup> in relation to the DSI matter and (if different) the appropriate authority in relation to the person whose conduct is in question of its determination<sup>9</sup> and send to it (or each of them) a copy of the submission<sup>10</sup>.

If during the course of an investigation of a DSI matter it appears to a person appointed to conduct an investigation by an appropriate authority on its own behalf<sup>11</sup>, or appointed to conduct an investigation supervised by the Commission<sup>12</sup>, that there is an indication that a person serving with the police may have committed a criminal offence<sup>13</sup> or behaved in a manner which would justify the bringing of disciplinary proceedings<sup>14</sup>, he must make a submission to that effect to the appropriate authority in relation to the DSI matter<sup>15</sup>. If, after

considering such a submission, the appropriate authority determines that there is such an indication, it must, if it is not the appropriate authority in relation to the person whose conduct is in question, notify that other authority of its determination and send to that authority a copy of the submission<sup>16</sup>; and it must also notify the Commission of its determination and send it a copy of the submission<sup>17</sup>.

Where the appropriate authority in relation to the person whose conduct is in question: (1) is notified of a determination<sup>18</sup> by the Commission<sup>19</sup>; (2) in a case where it is also the appropriate authority in relation to the DSI matter, makes<sup>20</sup> a determination<sup>21</sup>; or (3) in a case where it is not the appropriate authority in relation to the DSI matter, is notified by that other authority of a determination<sup>22</sup> by it<sup>23</sup>, it must record the matter<sup>24</sup> as a conduct matter<sup>25</sup>.

1 For the meaning of 'DSI matter' see PARA 329 ante.

2 Ie a person appointed under the Police Reform Act 2002 s 13, Sch 3 para 18 (as amended): see PARA 372 ante. As to the Independent Police Complaints Commission see PARA 316 et seq ante.

3 Ie a person designated under ibid Sch 3 para 19 (as amended): see PARA 374 ante.

4 For the meaning of 'person serving with the police' see PARA 327 note 7 ante. In ibid Sch 3 para 21A (as added) such person is known as 'the person whose conduct is in question': Sch 3 para 21A(1), (3) (Sch 3 para 21A added by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 20). For the meaning of 'conduct' see PARA 329 note 3 ante.

5 Police Reform Act 2002 Sch 3 para 21A(1)(a) (as added: see note 4 supra).

6 Ibid Sch 3 para 21A(1)(b) (as added: see note 4 supra). For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

7 Ibid Sch 3 para 21A(1) (as added: see note 4 supra).

8 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

9 Police Reform Act 2002 Sch 3 para 21A(2)(a) (as added: see note 4 supra).

10 Ibid Sch 3 para 21A(2)(b) (as added: see note 4 supra).

11 Ie appointed under ibid Sch 3 para 16 (as amended): see PARA 370 ante.

12 Ie appointed under ibid Sch 3 para 17 (as amended): see PARA 371 ante.

13 Ibid Sch 3 para 21A(3)(a) (as added: see note 4 supra).

14 Ibid Sch 3 para 21A(3)(b) (as added: see note 4 supra).

15 Ibid Sch 3 para 21A(3) (as added: see note 4 supra).

16 Ibid Sch 3 para 21A(4)(a) (as added: see note 4 supra).

17 Ibid Sch 3 para 21A(4)(b) (as added: see note 4 supra).

18 Ie under ibid Sch 3 para 21A(2) (as added): see the text to notes 8-10 supra.

19 Ibid Sch 3 para 21A(5)(a) (as added: see note 4 supra).

20 Ie under ibid Sch 3 para 21A(4) (as added): see the text to notes 16-17 supra.

21 Ibid Sch 3 para 21A(5)(b) (as added: see note 4 supra).

22 Ie under ibid Sch 3 para 21A(4) (as added): see the text to notes 16-17 supra.

23 Ibid Sch 3 para 21A(5)(c) (as added: see note 4 supra).

24 Ie under ibid Sch 3 para 11: see PARA 362 ante.

25 Ibid Sch 3 para 21A(5) (as added: see note 4 supra). In such circumstances the other provisions of Sch 3 (as amended) apply in relation to that matter accordingly: Sch 3 para 21A(5) (as so added). For the meaning of 'conduct matter' see PARA 329 ante.

## UPDATE

### **383 Procedure where conduct matter is revealed during investigation of DSI matter**

TEXT AND NOTES 19-25--Police Reform Act 2002 Sch 3 para 21A(5) amended, Sch 3 para 21A(6) added: Criminal Justice and Immigration Act 2008 Sch 23 para 11, Sch 28 Pt 8.

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### **384. Final reports on investigations: complaints, conduct matters and certain DSI matters.**

On the completion of an investigation of a complaint<sup>1</sup>, a conduct matter<sup>2</sup> or a DSI matter<sup>3</sup> in respect of which the Independent Police Complaints Commission<sup>4</sup> or the appropriate authority<sup>5</sup> has made<sup>6</sup> a determination<sup>7</sup>:

- 228 (1) a person appointed<sup>8</sup> to conduct an investigation by an appropriate authority on its own behalf must submit a report on his investigation to the appropriate authority<sup>9</sup>;
- 229 (2) a person appointed<sup>10</sup> to conduct an investigation supervised or managed by the Commission must submit a report on his investigation to the Commission<sup>11</sup> and send a copy of that report to the appropriate authority<sup>12</sup>;
- 230 (3) a person designated<sup>13</sup> as the person in charge of an investigation by the Commission itself must submit a report on it to the Commission<sup>14</sup>.

A person submitting any such report is not prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in his report as he thinks fit<sup>15</sup>.

1 For the meaning of 'complaint' see PARA 329 ante.

2 For the meaning of 'conduct matter' see PARA 329 ante.

3 For the meaning of 'DSI matter' see PARA 329 ante.

4 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

5 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

6 Ie under the Police Reform Act 2002 s 13, Sch 3 para 21A(2) or (4) (as added): see PARA 383 ante.

7 Ibid Sch 3 para 22(1) (Sch 3 para 22 substituted by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 21).

8 Ie under the Police Reform Act 2002 Sch 3 para 16 (as amended): see PARA 370 ante.

9 Ibid Sch 3 para 22(2) (as substituted: see note 7 supra). In relation to a DSI matter in respect of which a determination has been made under Sch 3 para 21A(2) or (4) (as added) (see PARA 383 ante), the references in



Sch 3 para 22(2) (as substituted) and Sch 3 para 22(3) (as substituted) (see the text and notes 10-12 *infra*) to the appropriate authority are references to: (1) the appropriate authority in relation to the DSI matter; and (2) (where different) the appropriate authority in relation to the person whose conduct is in question: Sch 3 para 22(4) (as so substituted).

10    Ie under *ibid* Sch 3 para 17 (as amended) or Sch 3 para 18 (as amended): see PARAS 371-372 *ante*.

11    *Ibid* Sch 3 para 22(3)(a) (as substituted: see note 7 *supra*).

12    *Ibid* Sch 3 para 22(3)(b) (as substituted: see note 7 *supra*). See also note 9 *supra*.

13    Ie under *ibid* Sch 3 para 19 (as amended): see PARA 374 *ante*.

14    *Ibid* Sch 3 para 22(5) (as substituted: see note 7 *supra*).

15    *Ibid* Sch 3 para 22(6) (as substituted: see note 7 *supra*). As to the law in respect of confidence and data protection see CONFIDENCE AND DATA PROTECTION.

## UPDATE

### **384 Final reports on investigations: complaints, conduct matters and certain DSI matters**

TEXT AND NOTES--Police Reform Act 2002 Sch 3 para 22(1), (4) amended, Sch 3 para 22(7)-(10) added: Criminal Justice and Immigration Act 2008 Sch 23 para 12, Sch 28 Pt 8. For savings see SI 2008/2993.

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### **385. Action by the Commission in response to an investigation report.**

Where a report on an investigation carried out under the management of the Independent Police Complaints Commission<sup>1</sup> is submitted<sup>2</sup> to it<sup>3</sup>, or a report on an investigation carried out by a person designated by the Commission is submitted<sup>4</sup> to it<sup>5</sup>, the Commission must, on receipt of the report:

- 231 (1) if it appears that the appropriate authority<sup>6</sup> has not already been sent a copy of the report, send a copy of the report to that authority<sup>7</sup>;
- 232 (2) determine whether the report indicates that a criminal offence may have been committed by the person whose conduct was the subject-matter of the investigation<sup>8</sup>;
- 233 (3) if it determines that the report does so indicate, notify the Director of Public Prosecutions of the determination and send him a copy of the report<sup>9</sup>; and
- 234 (4) notify the appropriate authority of its determination under head (2) above and of any action taken by it under head (3) above<sup>10</sup>.

The Director of Public Prosecutions must notify the Commission of any decision of his to take, or not to take, action in respect of the matters dealt with in any report a copy of which has been sent to him under head (3) above<sup>11</sup>.

Where the Commission: (a) has determined under head (2) above that there is no indication in the report that a criminal offence may have been committed<sup>12</sup>; (b) is notified by the Director of

Public Prosecutions, in any case in which it has sent him a copy of the report, that the Director proposes to take no action in respect of any of the matters dealt with in the report<sup>13</sup>; or (c) is satisfied that all criminal proceedings brought or likely to be brought in respect of matters dealt with in the report have been brought to a conclusion (apart from the bringing and determination of any appeal)<sup>14</sup>, the Commission must give a notification to the appropriate authority requiring it to determine what action (if any) it will itself take in respect of the matters dealt with in the report<sup>15</sup>. On being so required to determine what action it will take in respect of the matters dealt with in the report, the appropriate authority must make that determination and submit a memorandum to the Commission which: (i) sets out whether the appropriate authority is proposing to take any action in respect of the matters dealt with in the report<sup>16</sup>; (ii) if the appropriate authority is proposing to take any action, sets out what action it is proposing to take<sup>17</sup>; and (iii) if the appropriate authority has decided in relation to any person whose conduct is the subject-matter of the report that disciplinary proceedings<sup>18</sup> should not be brought against that person, sets out its reasons for so deciding<sup>19</sup>. On receipt of the memorandum, the Commission must: (A) consider the memorandum and whether the appropriate authority is proposing to take the action that the Commission considers appropriate in respect of the matters dealt with in the report<sup>20</sup>; (B) determine, in the light of its consideration of those matters, whether or not to make recommendations<sup>21</sup> as to disciplinary proceedings<sup>22</sup>; and (c) make such recommendations (if any) as it thinks fit<sup>23</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 Ie under the Police Reform Act 2002 s 13, Sch 3 para 22(3) (as substituted): see PARA 384 ante.

3 Ibid Sch 3 para 23(1)(a) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 22(2)(a)).

4 Ie under the Police Reform Act 2002 Sch 3 para 22(5) (as substituted): see PARA 384 ante.

5 Ibid Sch 3 para 23(1)(b) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 22(2)(b)).

6 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante. In relation to a DSI matter in respect of which a determination has been made under the Police Reform Act 2002 Sch 3 para 21A(2) or (4) (as added) (see PARA 383 ante), the references in Sch 3 para 23 (as amended) to the appropriate authority are references to the appropriate authority in relation to the person whose conduct is in question: Sch 3 para 23(13) (added by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 22(3)). For the meaning of 'DSI matter' see PARA 329 ante. For the meaning of 'conduct' see PARA 329 note 3 ante.

7 Police Reform Act 2002 Sch 3 para 23(2)(a).

8 Ibid Sch 3 para 23(2)(b).

9 Ibid Sch 3 para 23(2)(c). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

10 Ibid Sch 3 para 23(2)(d).

11 Ibid Sch 3 para 23(3). It is the duty of the Commission to notify the following persons if criminal proceedings are brought against any person by the Director of Public Prosecutions in respect of any matters dealt with in such a report copied to him (Sch 3 para 23(4)): (1) in the case of a complaint, the complainant and every person entitled to be kept properly informed in relation to the complaint under s 21 (see PARA 338 ante) (Sch 3 para 23(5)(a)); and (2) in the case of a recordable conduct matter, every person entitled to be kept properly informed in relation to that matter under s 21 (Sch 3 para 23(5)(b)). For the meaning of 'complaint' see PARA 329 ante. For the meaning of 'complainant' see PARA 337 note 4 ante. For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.

12 Ibid Sch 3 para 23(6)(a).

13 Ibid Sch 3 para 23(6)(b).

14 Ibid Sch 3 para 23(6)(c).

15 Ibid Sch 3 para 23(6).

16 Ibid Sch 3 para 23(7)(a).

17 Ibid Sch 3 para 23(7)(b).

18 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

19 Police Reform Act 2002 Sch 3 para 23(7)(c).

20 Ibid Sch 3 para 23(8)(a).

21 Ie under ibid Sch 3 para 27: see PARA 390 post.

22 Ibid Sch 3 para 23(8)(b). On the making of a determination under Sch 3 para 23(8)(b) the Commission must give a notification: (1) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed in relation to the complaint under s 21 (see PARA 338 ante) (Sch 3 para 23(9)(a)); and (2) in the case of a recordable conduct matter, to every person entitled to be kept properly informed in relation to that matter under s 21 (Sch 3 para 23(9)(b)). The notification required is one setting out: (a) the findings of the report (Sch 3 para 23(10)(a)); (b) the Commission's determination under Sch 3 para 23(8)(b) (Sch 3 para 23(10)(b)); and (c) the action which the appropriate authority is to be recommended to take as a consequence of the determination (Sch 3 para 23(10)(c)). The provisions of s 20(5)-(7) (relating to the making of regulations: see PARA 337 ante) have effect in relation to the duties imposed on the Commission by Sch 3 para 23(9) as they have effect in relation to the duties imposed on the Commission by s 20: Sch 3 para 23(11). Except so far as may be otherwise provided by regulations made by virtue of Sch 3 para 23(11), the Commission is entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in Sch 3 para 23(9) notification of the findings of the report by sending that person a copy of the report: Sch 3 para 23(12). As to exceptions to the duty to disclose information under Sch 3 para 23(9) see the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 12; and PARA 339 ante. As to the law in respect of confidence and data protection see CONFIDENCE AND DATA PROTECTION.

So far as not covered by the Police Reform Act 2002 Sch 3 para 23(9), (10), where the Commission takes any action or decisions in consequence of it having received a memorandum under Sch 3 para 23(7) (see the text to notes 16-19 supra) it must notify such action or decisions, together with an explanation of its reasons for having taken them, to the appropriate authority, the complainant and any other interested person, and the person complained against: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 23(1). Without prejudice to the generality of reg 23(1), the Commission must include in any such notification a statement as to whether it intends to bring and conduct, or otherwise participate or intervene in, any disciplinary proceedings: reg 23(2). The Commission may decide not to give such a notification and explanation to the person complained against if it is of the opinion that that notification might prejudice any criminal investigation, pending proceedings, or review of the complaint: reg 23(3). For the meaning of 'person complained against' see PARA 340 note 13 ante. For the meaning of 'interested person' see PARA 338 ante. In performing the duties imposed by the Police Reform Act 2002 Sch 3 para 23(9), the Commission must determine whether it is appropriate to offer, or to accede to a request for, a meeting with a complainant or, as the case may be, an interested person: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 11(5). As soon as practicable after any such meeting the Commission must send to the complainant or interested person a written record of the meeting and an account of how any concerns of that person will be addressed: reg 11(6). For the meaning of 'written' see PARA 115 note 9 ante.

23 Police Reform Act 2002 Sch 3 para 23(8)(c).

## UPDATE

### 385 Action by the Commission in response to an investigation report

TEXT AND NOTES--Police Reform Act 2002 Sch 3 para 23 further amended: Criminal Justice and Immigration Act 2008 Sch 23 para 13. For savings see SI 2008/2993.

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### 386. Action by the appropriate authority in response to an investigation report.

Where: (1) a report of an investigation is submitted<sup>1</sup> to the appropriate authority<sup>2</sup>; or (2) a copy of a report on an investigation carried out under the supervision of the Independent Police Complaints Commission<sup>3</sup> is sent<sup>4</sup> to the appropriate authority<sup>5</sup>, the appropriate authority must, on receipt of the report or (as the case may be) of the copy, determine whether the report indicates that a criminal offence may have been committed by a person whose conduct was the subject-matter of the investigation<sup>6</sup>. If the appropriate authority determines that the report does so indicate, it must notify the Director of Public Prosecutions of the determination and send him a copy of the report<sup>7</sup>. The Director of Public Prosecutions must notify the appropriate authority of any decision of his to take, or not to take, action in respect of the matters dealt with in any report a copy of which has been sent to him<sup>8</sup>.

Where the appropriate authority: (a) has determined that there is no indication in the report that a criminal offence may have been committed<sup>9</sup>; (b) is notified by the Director of Public Prosecutions, in any case in which it has sent him a copy of the report, that the Director proposes to take no action in respect of any of the matters dealt with in the report<sup>10</sup>; or (c) is satisfied that all criminal proceedings brought or likely to be brought in respect of matters dealt with in the report have been brought to a conclusion (apart from the bringing and determination of any appeal)<sup>11</sup>, the appropriate authority must determine what action (if any) it will itself take in respect of the matters dealt with in the report<sup>12</sup>. On the making of such a determination the appropriate authority must give a notification<sup>13</sup>: (i) in the case of a complaint, to the complainant and to every person entitled to be kept properly informed<sup>14</sup> in relation to the complaint<sup>15</sup>; and (ii) in the case of a recordable conduct matter, to every person entitled to be kept properly informed<sup>16</sup> in relation to that matter<sup>17</sup>.

1 le in accordance with the Police Reform Act 2002 s 13, Sch 3 para 22(2) (as substituted): see PARA 384 ante.

2 Ibid Sch 3 para 24(1)(a) (amended by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 23(2)(a)). For the meaning of 'the appropriate authority' see PARA 337 note 14 ante. In relation to a DSI matter in respect of which a determination has been made under the Police Reform Act 2002 Sch 3 para 21A(2) or (4) (as added) (see PARA 383 ante), the references in Sch 3 para 24 (as amended) to the appropriate authority are references to the appropriate authority in relation to the person whose conduct is in question: Sch 3 para 24(11) (added by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 23(3)). For the meaning of 'DSI matter' see PARA 329 ante. For the meaning of 'conduct' see PARA 329 note 3 ante.

3 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

4 le in accordance with the Police Reform Act 2002 Sch 3 para 22(3) (as substituted): see PARA 384 ante.

5 Ibid Sch 3 para 24(1)(b) (amended by the Serious Organised Crime and Police Act 2005 Sch 12 paras 1, 11, 23(2)(b)).

6 Police Reform Act 2002 Sch 3 para 24(2)(a).

7 Ibid Sch 3 para 24(2)(b). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

8 Ibid Sch 3 para 24(3). It is the duty of the appropriate authority to notify the specified persons if criminal proceedings are brought against any person by the Director of Public Prosecutions in respect of any matters dealt with in a report copied to him: Sch 3 para 24(4). The specified persons are: (1) in the case of a complaint, the complainant and every person entitled to be kept properly informed in relation to the complaint under s 21 (see PARA 338 ante) (Sch 3 para 24(5)(a)); and (2) in the case of a recordable conduct matter, every person entitled to be kept properly informed in relation to that matter under s 21 (Sch 3 para 24(5)(b)). For the meaning of 'complaint' see PARA 329 ante. For the meaning of 'complainant' see PARA 337 note 4 ante. For the meaning of 'recordable conduct matter' see PARA 362 note 19 ante.

9 Ibid Sch 3 para 24(6)(a).

10 Ibid Sch 3 para 24(6)(b).

11 Ibid Sch 3 para 24(6)(c).

12 Ibid Sch 3 para 24(6).

13 The notification required is one setting out: (1) the findings of the report (ibid Sch 3 para 24(8)(a)); (2) whether the authority has determined under Sch 3 para 24(6) (see the text to note 12 supra) to take any action (Sch 3 para 24(8)(b)); (3) the action (if any) which that authority has decided to take (Sch 3 para 24(8)(c)); and (4) the complainant's right of appeal under Sch 3 para 25 (see PARA 388 post) (Sch 3 para 24(8)(d)). The provisions of s 20(5)-(7) (relating to the making of regulations: see PARA 337 ante) have effect in relation to the duties imposed on the appropriate authority by Sch 3 para 24(7) as they have effect in relation to the duties imposed on the appropriate authority by s 20: Sch 3 para 24(9). Except so far as may be otherwise provided by regulations made by virtue of Sch 3 para 24(9), the appropriate authority is entitled (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) to discharge the duty to give a person mentioned in Sch 3 para 24(7) notification of the findings of the report by sending that person a copy of the report: Sch 3 para 24(10). As to exceptions to the duty to disclose information under Sch 3 para 24(7) see the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 12; and PARA 339 ante. As to the law in respect of confidence and data protection see CONFIDENCE AND DATA PROTECTION.

In performing the duties imposed by the Police Reform Act 2002 Sch 3 para 24(7), the appropriate authority must determine whether it is appropriate to offer, or to accede to a request for, a meeting with a complainant or, as the case may be, an interested person: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 11(5). As soon as practicable after any such meeting the appropriate authority must send to the complainant or interested person a written record of the meeting and an account of how any concerns of that person will be addressed: reg 11(6). For the meaning of 'interested person' see PARA 338 ante. For the meaning of 'written' see PARA 115 note 9 ante.

14 Ie under the Police Reform Act 2002 s 21: see PARA 338 ante.

15 Ibid Sch 3 para 24(7)(a).

16 Ie under ibid s 21: see PARA 338 ante.

17 Ibid Sch 3 para 24(7)(b).

## UPDATE

### **386 Action by the appropriate authority in response to an investigation report**

TEXT AND NOTES--Police Reform Act 2002 Sch 3 para 24 further amended: Criminal Justice and Immigration Act 2008 Sch 23 para 14. For savings see SI 2008/2993.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(iv) Complaints/B. INVESTIGATION OF COMPLAINTS/(E) Investigations and Subsequent Proceedings/387. Investigation reports: other DSI matters.

### **387. Investigation reports: other DSI matters.**

On the completion of an investigation of a DSI matter<sup>1</sup> in respect of which neither the Independent Police Complaints Commission<sup>2</sup> nor the appropriate authority<sup>3</sup> has made<sup>4</sup> a determination<sup>5</sup>, a person appointed<sup>6</sup> or designated<sup>7</sup> to carry out an investigation must submit a report on the investigation to the Commission<sup>8</sup> and send a copy of that report to the appropriate authority<sup>9</sup>.

On receipt of the report, the Commission must determine whether the report indicates that a person serving with the police<sup>10</sup> may have committed a criminal offence<sup>11</sup>, or behaved in a manner which would justify the bringing of disciplinary proceedings<sup>12</sup>. If the Commission

determines that the report indicates that a person serving with the police may have committed a criminal offence or have behaved in such a manner, it must notify the appropriate authority in relation to the person whose conduct<sup>13</sup> is in question of its determination and, if it appears that that authority has not already been sent a copy of the report, send a copy of the report to that authority<sup>14</sup>. If the Commission determines that there is no indication in the report that a person serving with the police may have committed a criminal offence or behaved in such a manner, it must make such recommendations or give such advice<sup>15</sup> (if any) as it considers necessary or desirable<sup>16</sup>.

1 For the meaning of 'DSI matter' see PARA 329 ante.

2 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

3 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

4 Ie under the Police Reform Act 2002 s 13, Sch 3 para 21A(2) or (4) (as added): see PARA 383 ante.

5 Ibid Sch 3 para 24A(1) (Sch 3 paras 24A-24C added by the Serious Organised Crime and Police Act 2005 s 160, Sch 12 paras 1, 11, 24).

6 Ie under the Police Reform Act 2002 Sch 3 para 16, 17 or 18 (as amended): see PARAS 370-372 ante.

7 Ie under ibid Sch 3 para 19 (as amended): see PARA 374 ante.

8 Ibid Sch 3 para 24A(2)(a) (as added: see note 5 supra). A person submitting such a report is not prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in his report as he thinks fit: Sch 3 para 24A(3) (as so added). As to the law in respect of confidence and data protection see CONFIDENCE AND DATA PROTECTION.

9 Ibid Sch 3 para 24A(2)(b) (as added: see note 5 supra).

10 For the meaning of 'person serving with the police' see PARA 327 note 7 ante.

11 Police Reform Act 2002 Sch 3 para 24A(4)(a) (as added: see note 5 supra).

12 Ibid Sch 3 para 24A(4)(b) (as added: see note 5 supra). For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

13 For the meaning of 'conduct' see PARA 329 note 3 ante.

14 Police Reform Act 2002 Sch 3 para 24B(1) (as added: see note 5 supra). Where the appropriate authority in relation to the person whose conduct is in question is so notified of a determination by the Commission, it must record the matter under Sch 3 para 11 (see PARA 362 ante) as a conduct matter (and the other provisions of Sch 3 (as amended) apply in relation to that matter accordingly): Sch 3 para 24B(2) (as so added). For the meaning of 'conduct matter' see PARA 329 ante.

15 Ie under ibid s 10(1)(e): see PARA 327 ante.

16 Ibid Sch 3 para 24C(1) (as added: see note 5 supra). This provision does not affect any power of the Commission to make recommendations or give advice under s 10(1)(e) (see PARA 327 ante) in other cases (whether arising under Sch 3 (as amended) or otherwise): Sch 3 para 24C(2) (as so added).

## UPDATE

### 387 Investigation reports: other DSI matters

TEXT AND NOTES 8, 9--Police Reform Act 2002 Sch 3 para 24A(2) amended: Criminal Justice and Immigration Act 2008 Sch 23 para 15. For savings see SI 2008/2993.

NOTE 14--Police Reform Act 2002 Sch 3 para 24B(2) amended, Sch 3 para 24B(3) added: Criminal Justice and Immigration Act 2008 Sch 23 para 16, Sch 28 Pt 8.

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### **388. Appeals to the Commission with respect to an investigation.**

Where a complaint<sup>1</sup> has been subjected to an investigation by the appropriate authority<sup>2</sup> on its own behalf<sup>3</sup> or an investigation under the supervision of the Independent Police Complaints Commission<sup>4</sup>, the complainant<sup>5</sup> has the following rights of appeal to the Commission<sup>6</sup>:

- 235 (1) a right to appeal on the grounds that he has not been provided with adequate information about the findings of the investigation<sup>7</sup> or about any proposals of the appropriate authority to take, or not to take, action in consequence of the report<sup>8</sup>;
- 236 (2) a right to appeal against the findings of the investigation<sup>9</sup>; and
- 237 (3) a right of appeal against any proposal of the appropriate authority to take, or not to take, action in respect of any of the matters dealt with in the report of the investigation<sup>10</sup>.

It is the duty of the Commission to notify the appropriate authority, every person entitled to be kept properly informed in relation to the complaint<sup>11</sup>, and the person complained against<sup>12</sup>, of any such appeal<sup>13</sup>.

On the bringing of any such appeal, the Commission may require the appropriate authority<sup>14</sup> to submit a memorandum to the Commission which: (a) sets out whether the appropriate authority is proposing to take any action in respect of the matters dealt with in the report<sup>15</sup>; (b) if the appropriate authority is proposing to take any action, sets out what action it is proposing to take<sup>16</sup>; and (c) if the appropriate authority has decided in relation to any person whose conduct<sup>17</sup> is the subject-matter of the report that disciplinary proceedings<sup>18</sup> should not be brought against that person, sets out its reasons for so deciding<sup>19</sup>.

On an appeal, the Commission must determine: (i) whether the complainant has been provided with adequate information about the matters mentioned in head (1) above<sup>20</sup>; (ii) whether the findings of the investigation need to be reconsidered<sup>21</sup>; and (iii) whether the appropriate authority is proposing to take the action that the Commission considers appropriate in consequence of the report<sup>22</sup>. The Commission must determine the outcome of the appeal as soon as practicable<sup>23</sup>.

If the Commission determines that the complainant has not been provided with adequate information about any matter, the Commission must give the appropriate authority all such directions as the Commission considers appropriate for securing that the complainant is properly informed<sup>24</sup>. If the Commission determines that the findings of the investigation need to be reconsidered, it must either review those findings without an immediate further investigation<sup>25</sup> or direct that the complaint be re-investigated<sup>26</sup>. If the Commission determines that the appropriate authority is not proposing to take the action in consequence of the report that the Commission considers appropriate, the Commission must determine, in the light of that determination, whether or not to make recommendations<sup>27</sup> as to disciplinary proceedings<sup>28</sup> and make such recommendations (if any) as it thinks fit<sup>29</sup>.

The Commission must give notification of any determination to the appropriate authority<sup>30</sup>, to the complainant<sup>31</sup>, to every person entitled to be kept properly informed<sup>32</sup> in relation to the complaint<sup>33</sup> and, except in a case where it appears to the Commission that to do so might

prejudice any proposed review or re-investigation of the complaint, to the person complained against<sup>34</sup>. The Commission must notify the complainant and the appropriate authority of the reasons for its determination<sup>35</sup>. The Commission must also give notification of any directions given to the appropriate authority to the complainant<sup>36</sup>, to every person entitled to be kept properly informed<sup>37</sup> in relation to the complaint<sup>38</sup> and, except in a case where it appears to the Commission that to do so might prejudice any proposed review or re-investigation of the complaint, to the person complained against<sup>39</sup>.

It is the duty of the appropriate authority to comply with any directions given to it under these provisions<sup>40</sup>.

1 For the meaning of 'complaint' see PARA 329 ante.

2 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

3 Police Reform Act 2002 s 13, Sch 3 para 25(1)(a). As to such investigations see PARA 370 ante.

4 Ibid Sch 3 para 25(1)(b). As to such investigations see PARA 371 ante. As to the Independent Police Complaints Commission see PARA 316 et seq ante.

5 For the meaning of 'complainant' see PARA 337 note 4 ante.

6 The Secretary of State may by regulations make provision: (1) for the form and manner in which appeals under the Police Reform Act 2002 Sch 3 para 25 (as amended) are to be brought (Sch 3 para 25(13)(a)); (2) for the period within which any such appeal must be brought (Sch 3 para 25(13)(b)); and (3) for the procedure to be followed by the Commission when dealing with or disposing of any such appeal (Sch 3 para 25(13)(c)). As to the Secretary of State see PARA 107 note 15 ante. As to the making of regulations see PARA 346 ante.

Any appeal made by a complainant under Sch 3 para 25(2) must be made within 28 days of the date on which the appropriate authority sends a notification to the complainant of its determination under Sch 3 para 24(7) (see PARA 386 ante) as to what action (if any) it will take in respect of the matters dealt with in the investigation report: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 10(1). The Commission may extend this time period in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so: reg 10(8). Any such appeal must be in writing and must state: (a) details of the complaint (reg 10(2)(a)); (b) the date on which the complaint was made (reg 10(2)(b)); (c) the grounds for the appeal (reg 10(2)(c)); and (d) the date on which the complainant received notification under the Police Reform Act 2002 Sch 3 para 24(7) (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 10(2)(d)). Where the Commission receives an appeal which fails to comply with one or more of the requirements mentioned in reg 10(2), it may decide to proceed as if those requirements had been complied with: reg 10(4). For the meaning of 'writing' see PARA 115 note 9 ante.

7 Police Reform Act 2002 Sch 3 para 25(2)(a)(i). References to the findings of an investigation do not include a reference to findings on a report submitted under Sch 3 para 20A (as added) (see PARA 376 ante): Sch 3 para 25(2A)(a) (Sch 3 para 25(2A) added by the Serious Organised Crime and Police Act 2005 s 159, Sch 11 paras 1, 4).

8 Police Reform Act 2002 Sch 3 para 25(2)(a)(ii). As to reports see PARAS 384, 387 ante; and as to action by an appropriate authority in response to a report see PARA 386 ante.

9 Ibid Sch 3 para 25(2)(b).

10 Ibid Sch 3 para 25(2)(c). References to the report of an investigation do not include a reference to a report submitted under Sch 3 para 20A (as added) (see PARA 376 ante): Sch 3 para 25(2A)(b) (as added: see note 7 supra).

11 Ie under ibid s 21: see PARA 338 ante.

12 For the meaning of 'person complained against' see PARA 340 note 13 ante.

13 Police Reform Act 2002 Sch 3 para 25(2). Where the Commission receives an appeal, it may request any information from any person which it considers necessary to dispose of the appeal: Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 10(3). The appropriate authority must supply to the Commission any further information so requested of it: reg 10(5). Where the Commission so requires on the bringing of any appeal in the case of an investigation by the appropriate authority on its own behalf, the appropriate authority must provide the Commission with a copy of the report of the investigation: Police Reform Act 2002 Sch 3 para 25(4). For the meaning of 'person' see PARA 110 note 6 ante.



- 14 It is the duty of the appropriate authority to comply with any such requirement: *ibid* Sch 3 para 25(3).
- 15 *Ibid* Sch 3 para 25(3)(a). See note 19 *infra*.
- 16 *Ibid* Sch 3 para 25(3)(b). See note 19 *infra*.
- 17 For the meaning of 'conduct' see PARA 329 note 3 *ante*.
- 18 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 *ante*.
- 19 Police Reform Act 2002 Sch 3 para 25(3)(c). So far as not covered by Sch 3 para 25(10), (11) (see the text to notes 30-39 *infra*), where the Commission takes any action or decisions in consequence of it having received a memorandum under Sch 3 para 25(3), it must notify such action or decisions, together with an explanation of its reasons for having taken them, to: (1) the appropriate authority (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 23(1)(a)); (2) the complainant and any other interested person within the meaning of the Police Reform Act 2002 s 21(5) (see PARA 338 *ante*) (Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 23(1)(b)); (3) the person complained against (reg 23(1)(c)). Without prejudice to the generality of reg 23(1), the Commission must include in any such notification a statement as to whether it intends to bring and conduct, or otherwise participate or intervene in, any disciplinary proceedings: reg 23(2). The Commission may decide not to give such a notification and explanation to the person complained against if it is of the opinion that that notification might prejudice any criminal investigation, pending proceedings, or review of the complaint: reg 23(3).
- 20 Police Reform Act 2002 Sch 3 para 25(5)(a).
- 21 *Ibid* Sch 3 para 25(5)(b).
- 22 *Ibid* Sch 3 para 25(5)(c).
- 23 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 10(6).
- 24 Police Reform Act 2002 Sch 3 para 25(6). Nothing in this provision authorises the Commission to require the disclosure of any information the disclosure of which to the appellant has been or is capable of being withheld by virtue of regulations made under s 20(5) (see PARA 337 *ante*): Sch 3 para 25(7).
- 25 *Ibid* Sch 3 para 25(8)(a). As to the powers of the Commission on such a review see PARA 389 *post*.
- 26 *Ibid* Sch 3 para 25(8)(b). As to the determination by the Commission of the form such re-investigation is to take see PARA 389 *post*.
- 27 *Ie* under *ibid* para 27: see PARA 390 *post*.
- 28 *Ibid* Sch 3 para 25(9)(a).
- 29 *Ibid* Sch 3 para 25(9)(b).
- 30 *Ibid* Sch 3 para 25(10)(a).
- 31 *Ibid* Sch 3 para 25(10)(b).
- 32 *Ie* under *ibid* s 21: see PARA 338 *ante*.
- 33 *Ibid* Sch 3 para 25(10)(c).
- 34 *Ibid* Sch 3 para 25(10)(d).
- 35 Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 10(7).
- 36 Police Reform Act 2002 Sch 3 para 25(11)(a).
- 37 *Ie* under *ibid* s 21: see PARA 338 *ante*.
- 38 *Ibid* Sch 3 para 25(11)(b).
- 39 *Ibid* Sch 3 para 25(11)(c).
- 40 *Ibid* Sch 3 para 25(12).

**UPDATE****388 Appeals to the Commission with respect to an investigation**

TEXT AND NOTES--Police Reform Act 2002 Sch 3 para 25 further amended and repealed in part: Criminal Justice and Immigration Act 2008 Sch 23 para 17, Sch 28 Pt 8. For savings see SI 2008/2993.

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**389. Reviews and re-investigations following an appeal.**

On a review<sup>1</sup> of the findings of an investigation the powers of the Independent Police Complaints Commission<sup>2</sup> are, according to its determination on that review, to do one or more of the following:

- 238 (1) to uphold the findings in whole or in part<sup>3</sup>;
- 239 (2) to give the appropriate authority<sup>4</sup> such directions as the Commission thinks fit: (a) as to the carrying out by the appropriate authority of its own review of the findings<sup>5</sup>; (b) as to the information<sup>6</sup> to be provided to the complainant<sup>7</sup>; and (c) generally as to the handling of the matter in future<sup>8</sup>;
- 240 (3) to direct that the complaint<sup>9</sup> be re-investigated<sup>10</sup>.

Where the Commission directs<sup>11</sup> that a complaint be re-investigated, it must make a determination of the form that the re-investigation should take<sup>12</sup>. The Commission must give notification of any such determination to the appropriate authority<sup>13</sup>, to the complainant<sup>14</sup>, to every person entitled to be kept properly informed<sup>15</sup> in relation to the complaint<sup>16</sup> and, except in a case where it appears to the Commission that to do so might prejudice any proposed re-investigation of the complaint, to the person complained against<sup>17</sup>. The Commission must also give notification of any such directions given to the appropriate authority to the complainant<sup>18</sup>, to every person entitled to be kept properly informed<sup>19</sup> in relation to the complaint<sup>20</sup> and, except in a case where it appears to the Commission that to do so might prejudice any proposed review or re-investigation of the complaint, to the person complained against<sup>21</sup>.

1    Ie under the Police Reform Act 2002 s 13, Sch 3 para 25(8)(a): see PARA 388 ante.

2    As to the Independent Police Complaints Commission see PARA 316 et seq ante.

3    Police Reform Act 2002 Sch 3 para 26(1)(a).

4    For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

5    Police Reform Act 2002 Sch 3 para 26(1)(b)(i).

6    For the meaning of 'information' see PARA 334 note 5 ante.

7    Police Reform Act 2002 Sch 3 para 26(1)(b)(ii). For the meaning of 'complainant' see PARA 337 note 4 ante.

8    Ibid Sch 3 para 26(1)(b)(iii).

9 For the meaning of 'complaint' see PARA 329 ante.

10 Police Reform Act 2002 Sch 3 para 26(1)(c).

11 Ie under ibid Sch 3 para 25 (as amended) (see PARA 388 ante) or Sch 3 para 26(1) (see the text to notes 1-10 supra).

12 Ibid Sch 3 para 26(2). The provisions of Sch 3 para 15(3)-(7) apply in relation to such a determination as they apply in the case of a determination under Sch 3 para 15 (see PARA 369 ante): Sch 3 para 26(3). The other provisions of Sch 3 (as amended) (including Sch 3 para 26) apply in relation to any re-investigation in pursuance of a direction under Sch 3 para 25(8) or Sch 3 para 26(1) as they apply in relation to any investigation in pursuance of a determination under Sch 3 para 15: Sch 3 para 26(4).

13 Ibid Sch 3 para 26(5)(a).

14 Ibid Sch 3 para 26(5)(b).

15 Ie under ibid s 21: see PARA 338 ante.

16 Ibid Sch 3 para 26(5)(c).

17 Ibid Sch 3 para 26(5)(d). For the meaning of 'person complained against' see PARA 340 note 13 ante.

18 Ibid Sch 3 para 26(6)(a).

19 Ie under ibid s 21: see PARA 338 ante.

20 Ibid Sch 3 para 26(6)(b).

21 Ibid Sch 3 para 26(6)(c).

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### **390. Duties with respect to disciplinary proceedings.**

Where, in the case of any investigation, the appropriate authority<sup>1</sup>: (1) has given, or is required to give, a notification<sup>2</sup> of the action it is proposing to take in relation to the matters dealt with in any report of the investigation<sup>3</sup>; or (2) has submitted, or is required to submit, a memorandum to the Independent Police Complaints Commission<sup>4</sup> setting out the action that it is proposing to take in relation to those matters<sup>5</sup>, it is the duty of the appropriate authority<sup>6</sup> to take the action which has been or is required to be notified or, as the case may be, which is or is required to be set out in the memorandum<sup>7</sup> and, in a case where that action consists of or includes the bringing of disciplinary proceedings<sup>8</sup>, to secure that those proceedings, once brought, are proceeded with to a proper conclusion<sup>9</sup>.

Where the appropriate authority has submitted a memorandum to the Commission by virtue of head (2) above, the Commission may make a recommendation to the appropriate authority in respect of any person serving with the police<sup>10</sup>: (a) that disciplinary proceedings, or such disciplinary proceedings as may be specified in the recommendation, are brought against that person in respect of the conduct<sup>11</sup> which was the subject-matter of the investigation<sup>12</sup>; or (b) that any disciplinary proceedings brought against that person are modified so as to include such charges as may be so specified<sup>13</sup>. It is the duty of the appropriate authority to notify the Commission whether it accepts the recommendation and (if it does) to set out in the notification the steps that it is proposing to take to give effect to it<sup>14</sup>. If, after the Commission has made such a recommendation, the appropriate authority does not take steps to secure that full effect is given to the recommendation the Commission may direct the appropriate authority

to take steps for that purpose<sup>15</sup> and it is the duty of the appropriate authority to comply with the direction<sup>16</sup>. The Commission may at any time withdraw such a direction<sup>17</sup>. Where disciplinary proceedings have been brought in accordance with such a recommendation or direction, it is the duty of the authority to ensure that they are proceeded with to a proper conclusion<sup>18</sup>.

The appropriate authority must keep the Commission informed: (i) in a case in which head (2) above applies, of whatever action it takes in pursuance of its duty<sup>19</sup> to do so<sup>20</sup>; and (ii) in every case of a recommendation or direction under these provisions, of whatever action it takes in response to that recommendation or direction<sup>21</sup>.

1 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

2 Ie under the Police Reform Act 2002 s 13, Sch 3 para 24(7): see PARA 386 ante.

3 Ibid Sch 3 para 27(1)(a).

4 Ie under ibid Sch 3 para 23 (as amended) (see PARA 385 ante) or Sch 3 para 25 (as amended) (see PARA 388 ante). As to the Independent Police Complaints Commission see PARA 316 et seq ante.

5 Ibid Sch 3 para 27(1)(b).

6 Ie subject to ibid Sch 3 para 20 (as amended) (see PARA 375 ante) and to any recommendations or directions under Sch 3 para 27(3)-(9) (see the text to notes 10-21 infra).

7 Ibid Sch 3 para 27(2)(a).

8 For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

9 Police Reform Act 2002 Sch 3 para 27(2)(b).

10 For the meaning of 'person serving with the police' see PARA 327 note 7 ante.

11 For the meaning of 'conduct' see PARA 329 note 3 ante.

12 Police Reform Act 2002 Sch 3 para 27(3)(a).

13 Ibid Sch 3 para 27(3)(b). As to information to be given to the complainant about disciplinary recommendations see PARA 391 post.

14 Ibid Sch 3 para 27(3).

15 Ibid Sch 3 para 27(4)(a). A direction may, to such extent as the Commission thinks fit, set out the steps to be taken by the appropriate authority in order to give effect to the recommendation: Sch 3 para 27(5). Where the Commission gives the appropriate authority a direction, it must supply the appropriate authority with a statement of its reasons for doing so: Sch 3 para 27(6).

16 Ibid Sch 3 para 27(4)(b).

17 Ibid Sch 3 para 27(8). Schedule 3 para 27(7) (see the text to note 18 infra) does not impose any obligation in relation to any time after the withdrawal of the direction: Sch 3 para 27(8).

18 Ibid Sch 3 para 27(7). See also note 17 supra.

19 Ie its duty under ibid Sch 3 para 27(2): see the text to notes 6-9 supra.

20 Ibid Sch 3 para 27(9)(a).

21 Ibid Sch 3 para 27(9)(b).

## UPDATE

### 390 Duties with respect to disciplinary proceedings

TEXT AND NOTES 3, 5, 12-14--Police Reform Act 2002 Sch 3 para 27(1), (3) amended: Criminal Justice and Immigration Act 2008 Sch 23 para 18. For savings see SI 2008/2993.

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### **391. Information for complainant about disciplinary recommendations.**

Where the Independent Police Complaints Commission<sup>1</sup> makes recommendations as to disciplinary proceedings<sup>2</sup> in the case of an investigation of a complaint<sup>3</sup> and the appropriate authority<sup>4</sup> notifies the Commission that the recommendations have been accepted<sup>5</sup>, the Commission must notify the complainant<sup>6</sup> and every person entitled<sup>7</sup> to be kept properly informed in relation to the complaint of that fact and of the steps that have been, or are to be taken, by the appropriate authority to give effect to it<sup>8</sup>.

Where in the case of an investigation of a complaint the appropriate authority notifies the Commission that it does not (either in whole or in part) accept recommendations made<sup>9</sup> by the Commission<sup>10</sup>, or fails to take steps to give full effect to any such recommendations<sup>11</sup>, it is the duty of the Commission to determine what, if any, further steps<sup>12</sup> to take<sup>13</sup>. It is the duty of the Commission to notify the complainant and every person entitled<sup>14</sup> to be kept properly informed in relation to the complaint of any such determination not to take further steps<sup>15</sup>, and, where it determines to take further steps, of the outcome of the taking of those steps<sup>16</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 et seq ante.

2 Ie under the Police Reform Act 2002 s 13, Sch 3 para 27: see PARA 390 ante. For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

3 Ibid Sch 3 para 28(1)(a). For the meaning of 'complaint' see PARA 329 ante.

4 For the meaning of 'the appropriate authority' see PARA 337 note 14 ante.

5 Police Reform Act 2002 Sch 3 para 28(1)(b).

6 For the meaning of 'complainant' see PARA 337 note 4 ante.

7 Ie under the Police Reform Act 2002 s 21: see PARA 338 ante.

8 Ibid Sch 3 para 28(1).

9 Ie under ibid Sch 3 para 27: see PARA 390 ante.

10 Ibid Sch 3 para 28(2)(a).

11 Ibid Sch 3 para 28(2)(b).

12 Ie under ibid Sch 3 para 27: see PARA 390 ante.

13 Ibid Sch 3 para 28(2).

14 Ie under ibid s 21: see PARA 338 ante.

15 Ibid Sch 3 para 28(3)(a).

16 Ibid Sch 3 para 28(3)(b).

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## **(v) Conditions of Service and Emoluments**

### **392. Restrictions on private life.**

The following restrictions on private life apply to all members of a police force<sup>1</sup>. A member of a police force:

- 241 (1) must at all times abstain from any activity which is likely to interfere with the impartial discharge of his duties or which is likely to give rise to the impression amongst members of the public that it may so interfere<sup>2</sup>;
- 242 (2) must in particular not take any active part in politics<sup>3</sup> nor belong to any organisation specified or described in a determination of the Secretary of State<sup>4</sup>;
- 243 (3) must not reside at premises which are not for the time being approved by the chief officer of police<sup>5</sup>;
- 244 (4) must not, without the previous consent of the chief officer of police, receive a lodger in a house or quarters with which he is provided by the police authority<sup>6</sup>, or sub-let any part of the house or quarters<sup>7</sup>;
- 245 (5) must not, unless he has previously given written<sup>8</sup> notice to the chief officer of police, receive a lodger in a house in which he resides and in respect of which he receives an allowance<sup>9</sup>, or sub-let any part of such a house<sup>10</sup>;
- 246 (6) must not wilfully refuse or neglect to discharge any lawful debt<sup>11</sup>.

No restrictions other than those designed to secure the proper exercise of the functions of a constable<sup>12</sup> may be imposed by the police authority or the chief officer of police on the private life of members of a police force except such as may temporarily be necessary<sup>13</sup>, or such as may be approved by the Secretary of State after consultation with the Police Advisory Board for England and Wales<sup>14</sup>.

1 Police Regulations 2003, SI 2003/527, reg 6(1). For the meaning of 'member of a police force' see PARA 234 note 1 ante.

2 Ibid reg 6(1), Sch 1 para 1(1) (Sch 1 para 1 substituted by SI 2004/3216). See *Champion v Chief Constable of the Gwent Constabulary* [1990] 1 All ER 116, [1990] 1 WLR 1, HL (police constable's membership of school appointments committee not likely to give rise to such impression among members of the public). As to the code of conduct for police officers see PARA 246 ante.

3 Police Regulations 2003, SI 2003/527, Sch 1 para 1(2)(a) (as substituted: see note 2 supra).

4 Ibid Sch 1 para 1(2)(b) (as substituted: see note 2 supra). As to the Secretary of State see PARA 107 note 15 ante. As to determinations see PARA 404 post.

5 Ibid Sch 1 para 2. For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

6 For the meaning of 'police authority' see PARA 139 note 1 ante.

7 Police Regulations 2003, SI 2003/527, Sch 1 para 3(1).

8 For the meaning of 'written' see PARA 115 note 9 ante.

9 Ie under the Police Regulations 2003, SI 2003/527, reg 38, Sch 3: see PARA 399 post.

- 10 Ibid Sch 1 para 3(2).
- 11 Ibid Sch 1 para 4.
- 12 As to the office of constable see PARA 101 et seq ante.
- 13 Police Regulations 2003, SI 2003/527, reg 6(2)(a). Any restriction temporarily imposed must be reported forthwith to the Secretary of State: reg 6(3).
- 14 Ibid reg 6(2)(b). As to the Police Advisory Board for England and Wales see PARA 425 post.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/393. Restrictions affecting public rights and duties.

### **393. Restrictions affecting public rights and duties.**

There are various statutory restrictions on the public rights and duties of members of police forces.

Canvassing by a member of a police force<sup>1</sup> at a parliamentary, Welsh Assembly, European parliamentary or local election in his police area<sup>2</sup> constitutes a summary offence<sup>3</sup>. A member of any police force<sup>4</sup> maintained by a police authority<sup>5</sup> is disqualified for membership of the House of Commons<sup>6</sup>, as is the City of London Police Commissioner<sup>7</sup>, a member of the National Policing Improvement Agency<sup>8</sup>, and a member of the staff of the Serious Organised Crime Agency<sup>9</sup>. A member of a police force is disqualified for being appointed an independent member of a police authority<sup>10</sup>.

- 1 For the meaning of 'police force' see PARA 102 note 11 ante.
- 2 For the meaning of 'police area' see PARA 136 note 2 ante.
- 3 See the Representation of the People Act 1983 s 100(1), (2) (as amended); the National Assembly for Wales (Representation of the People) Order 2007, SI 2007/236, art 72; the European Parliamentary Elections Regulations 2004, SI 2004/293, reg 70(1); and ELECTIONS vol 15(4) (2007 Reissue) PARA 750.
- 4 'Member' in relation to a police force means a person employed as a full-time constable: House of Commons Disqualification Act 1975 s 1(3). As to the office of constable see PARA 101 et seq ante.
- 5 For the meaning of 'police authority' see PARA 139 note 1 ante.
- 6 See the House of Commons Disqualification Act 1975 s 1(1)(d); and PARLIAMENT vol 78 (2010) PARA 906.
- 7 As to the City of London Police Commissioner see PARA 187 ante.
- 8 As to the National Policing Improvement Agency see PARA 223 ante.
- 9 See the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II (as amended); and PARLIAMENT vol 78 (2010) PARA 908. As to the Serious Organised Crime Agency see PARA 430 et seq post.
- 10 See Police Act 1996 s 4(4), Sch 2 para 14(1)(d); and PARA 144 ante. This also applies to membership of the Metropolitan Police Authority: see s 5C(6), Sch 2A para 9(1)(f) (as added); and PARA 152 ante. See also PARAS 146, 155 ante.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/394. Business interests incompatible with membership of a police force.

### **394. Business interests incompatible with membership of a police force.**

If a member of a police force<sup>1</sup> proposes to have, or has, a business interest<sup>2</sup>, the member must forthwith give written<sup>3</sup> notice of that interest to the chief officer of police unless that business interest has previously been disclosed<sup>4</sup>. If a member of a police force is or becomes aware that a relative included in his family proposes to have, or has, a business interest which in the opinion of that member interferes, or could be seen as interfering, with the impartial discharge of his duties<sup>5</sup>, then that member must forthwith give written notice of that interest to the chief officer of police unless that business interest has previously been disclosed<sup>6</sup>.

On receipt of a notice<sup>7</sup>, the chief officer of police must determine whether or not the interest in question is compatible with the member concerned remaining a member of the force and, within 28 days of the receipt of that notice<sup>8</sup>, must notify the member in writing of his decision<sup>9</sup>. In making his determination the chief officer of police must have regard to whether as a result of the interest in question the member's conduct fails, or would fail, to meet the appropriate standard set out in the code of conduct for police officers<sup>10</sup>.

Within ten days of being notified of the chief officer of police's decision as aforesaid, or within such longer period as the police authority may in all the circumstances allow, the member concerned may appeal to the police authority against that decision by sending written notice of his appeal to the police authority<sup>11</sup>. Upon receipt of such notice, the police authority must forthwith require the chief officer of police to submit to it, within the next following ten days, a notice setting out the reasons for his decision and copies of any documents on which he relies in support of that decision; and the police authority must send to the member concerned copies of such notice and documents and afford him a reasonable opportunity, being in no case less than 14 days, to comment thereon<sup>12</sup>.

Where a member of a police force has so appealed to the police authority, the police authority must, within 28 days of receiving his comments on the notice and any other documents submitted by the chief officer of police, or of the expiration of the period afforded for making comments if none have by then been received, give him written notice of its determination of the appeal<sup>13</sup>. However, in a case where it appears to the police authority that: (1) the member has adduced substantive reasons why he or a relative included in his family should be permitted to have the business interest in question and those reasons have not been considered by the chief officer of police<sup>14</sup>; or (2) in reaching his determination the chief officer of police failed to apply fair procedures<sup>15</sup>, then the authority may refer the matter back to the chief officer for redetermination<sup>16</sup>. Where the police authority has upheld the decision of the chief officer of police and, within ten days of being so notified or within such longer period as the police authority may in all the circumstances allow, the member makes written request to the police authority for the reference of the matter to the Secretary of State<sup>17</sup>, the matter must be so referred and, unless and until the determination of the police authority is confirmed by the Secretary of State, it is of no effect and in particular, no action in dispensing with the services of the member<sup>18</sup> may be taken<sup>19</sup>.

Where a member of a police force, or a relative included in his family, has a business interest which the chief officer of police has determined<sup>20</sup> to be incompatible with his remaining a member of the force and either the member has not appealed against that decision<sup>21</sup> or on such appeal the police authority has upheld that decision<sup>22</sup>, then the chief officer of police may, subject to the approval of the police authority, dispense with the services of that member<sup>23</sup>. Before giving such approval, the police authority must give the member concerned an opportunity to make representations and must consider any representations so made<sup>24</sup>.



1 For the meaning of 'member of a police force' see PARA 234 note 1 ante.

In their application to a chief constable, deputy chief constable or assistant chief constable, the Police Regulations 2003, SI 2003/527, regs 7, 8 (both as amended) have effect as if: (1) for any reference therein to the chief officer of police there were substituted a reference to the police authority (reg 8(4)(a)); (2) for any reference in reg 7(3) (see the text to note 11 infra), reg 7(5) (see the text to notes 13, 17-19 infra) or reg 7(6) (see the text to notes 20-24 infra) to an appeal there were substituted a reference to a request for reconsideration (reg 8(4)(b)); and (3) the references in reg 7(6) to the approval of the police authority were omitted (reg 8(4)(c)). As to chief constables, deputy chief constables and assistant chief constables see PARAS 179-181 ante. For the meaning of 'chief officer of police' see PARA 105 note 7 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.

In their application to a member of the metropolitan police force, regs 7, 8 (both as amended) have effect as if for any reference to the chief officer of police there were substituted a reference to an assistant metropolitan police commissioner; except that nothing in this provision affects the power of the Metropolitan Police Commissioner, subject to the approval of the police authority, to dispense with the services of a member of the metropolitan police force in pursuance of reg 7(6) (see the text to notes 20-24 infra): reg 8(5). As to the Metropolitan Police Commissioner and assistant metropolitan police commissioners see PARAS 183, 186 ante. As to the metropolitan police force see PARA 137 ante.

2 A member of a police force or, as the case may be, a relative included in his family, has a business interest if: (1) the member holds any office or employment for hire or gain (otherwise than as a member of a police force) or carries on any business (ibid reg 8(1)(a)); or (2) the member, his spouse or civil partner (in each case not being separated from him) or any relative included in his family living with him holds, or possesses a pecuniary interest in, any licence or permit being a licence or permit granted in pursuance of the law relating to liquor licensing, refreshment houses or betting and gaming or regulating places of entertainment in the area of the police force in question (reg 8(1)(c), (2) (reg 8(1)(c) amended by SI 2006/3449)). A reference to a relative included in a member's family includes a reference to his spouse, parent, son, daughter, brother, sister, civil partner or any person living with the member as if they were his spouse or civil partner: Police Regulations 2003, SI 2003/527, reg 8(1) (amended by SI 2006/3449). As to civil partnerships see MATRIMONIAL AND CIVIL PARTNERSHIP LAW. As to liquor licensing see LICENSING AND GAMBLING; as to entertainment licences and refreshment houses see LICENSING AND GAMBLING; and as to betting and gaming see LICENSING AND GAMBLING. For the meaning of 'police force' see PARA 102 note 11 ante. For the meaning of 'police area' see PARA 136 note 2 ante.

3 For the meaning of 'written' see PARA 115 note 9 ante.

4 Police Regulations 2003, SI 2003/527, reg 7(1) (amended by SI 2006/3449). If a member of a police force or a relative included in his family has a business interest and, on that interest being notified or disclosed as mentioned in the Police Regulations 2003, SI 2003/527, reg 7(1) (as amended) or reg 7(1A) (as added) (see the text to notes 5-6 infra), the chief officer of police has, by written notice, required the member to furnish particulars of such changes in that interest, as respects its nature, extent or otherwise, as may be mentioned in the notice then, in the event of any such change in that interest being proposed or occurring, reg 7 (as amended) has effect as though the changed interest were a newly proposed, or newly acquired, interest which has not been notified or disclosed as aforesaid: reg 8(3) (amended by SI 2006/3449).

5 As to the discharge of duties see the code of conduct for police officers; and PARA 246 ante.

6 Police Regulations 2003, SI 2003/527, reg 7(1A) (added by SI 2006/3449). See also note 1 supra.

7 Under the Police Regulations 2003, SI 2003/527, reg 7(1) (as amended) or reg 7(1A) (as added): see the text to notes 1-6 supra. This provision also applies to the receipt by the chief officer of a referral given under reg 7(5A) (as added): see the text to notes 14-16 infra.

8 Or, as the case may be, the referral given under ibid reg 7(5A) (as added) (see the text to notes 14-16 infra).

9 Ibid reg 7(2) (amended by SI 2006/3449). See also note 1 supra.

10 Police Regulations 2003, SI 2003/527, reg 7(2A) (added by SI 2006/3449). See also note 1 supra. The code of conduct is that set out in the Police (Conduct) Regulations 2004, SI 2004/645, Sch 1: see PARA 246 ante.

11 Police Regulations 2003, SI 2003/527, reg 7(3). See also note 1 supra.

12 Ibid reg 7(4). See also note 1 supra.

13 Ibid reg 7(5). This provision is expressed to be subject to reg 7(5A) (as added): see the text to notes 14-16 infra. See also note 1 supra.

- 14 Ibid reg 7(5A)(a) (reg 7(5A) added by SI 2006/3449).
- 15 Police Regulations 2003, SI 2003/527, reg 7(5A)(b) (as added: note 14 supra).
- 16 Ibid reg 7(5A) (as added: note 14 supra). Such redetermination is under reg 7(2) (see the text to notes 7-9 supra): see reg 7(5A) (as so added).
- 17 As to the Secretary of State see PARA 107 note 15 ante.
- 18 Ie under the Police Regulations 2003, SI 2003/527, reg 7(6): see the text to notes 20-24 infra.
- 19 Ibid reg 7(5). See also note 1 supra.
- 20 Ie under ibid reg 7(2): see the text to notes 7-9 supra.
- 21 Ie under ibid reg 7(3): see the text to note 11 supra.
- 22 Ie subject to ibid reg 7(5): see the text to notes 17-19 supra.
- 23 Ibid reg 7(6). See also note 1 supra. A police authority must not dispense with the services of a chief constable, deputy chief constable or assistant chief constable without giving him an opportunity of making representations; and it must consider any representations so made: reg 8(4).
- 24 Ibid reg 7(6). See also note 1 supra.

## UPDATE

### 394 Business interests incompatible with membership of a police force

NOTE 10--SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/395. Personal records.

### 395. Personal records.

The chief officer of police<sup>1</sup> of a police force<sup>2</sup> must cause a personal record of each member of the police force<sup>3</sup> to be kept<sup>4</sup> containing: (1) a personal description of the member<sup>5</sup>; (2) particulars of the member's place and date of birth<sup>6</sup>; (3) particulars of his marriage or civil partnership (if any) and of his children (if any)<sup>7</sup>; (4) a record of his service (if any) in any branch of Her Majesty's naval, military or air forces or in the civil service<sup>8</sup>; (5) a record of his service (if any) in any other police force and of his transfers (if any) from one police force to another<sup>9</sup>; (6) a record of his service (if any) in the Royal Parks Constabulary<sup>10</sup>; (7) a record of whether he passed or failed to pass any qualifying examination at which he was a candidate<sup>11</sup>; (8) a record of his service in the police force and the date of his ceasing to be a member of the police force with the reason, cause or manner thereof<sup>12</sup>. A member of a police force is, if he so requests, entitled to inspect his personal record<sup>13</sup>. Where a member of a police force transfers to another police force his personal record must be transferred to the chief officer of police of that other police force<sup>14</sup>.

Where a member of a police force ceases to be a member of that police force the member must, unless he transfers to another police force, be given a certificate showing his rank and setting out the period of his service in that police force and in any other police force<sup>15</sup>. Where a member of a police force ceases to be a member of that police force, otherwise than by transferring to another police force, his personal record must be kept for such time as the chief officer of police may think fit and must then be destroyed<sup>16</sup>.

Every member of a police force must in accordance with the directions of the chief officer of police have his fingerprints taken<sup>17</sup>. The fingerprints of a member of a police force so taken<sup>18</sup> and all copies and records thereof must be destroyed on his ceasing to be a member of that force<sup>19</sup>. Every member of a police force, except those members appointed following their transfer from another police force, must on appointment and in accordance with the directions of the chief officer of police have a sample taken<sup>20</sup>. The samples or information derived from samples of a member of a police force so taken, and all copies and records thereof must be destroyed on his ceasing to be a member of that police force except by reason of a transfer to another force<sup>21</sup>.

The chief officer of police of a police force may require any member of the force who: (a) gives the chief officer reasonable cause to suspect that he has used a controlled drug<sup>22</sup>; (b) is on a period of probation<sup>23</sup>; (c) has been identified by the chief officer as being vulnerable because of a specific responsibility for dealing with drugs<sup>24</sup>; or (d) is of a description specified in a determination of the Secretary of State<sup>25</sup>, to give a sample of saliva or urine to be tested for evidence of controlled drugs in accordance with procedures determined by the Secretary of State<sup>26</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 For the meaning of 'member of a police force' see PARA 234 note 1 ante.

4 Police Regulations 2003, SI 2003/527, reg 15(1).

5 Ibid reg 15(2)(a).

6 Ibid reg 15(2)(b).

7 Ibid reg 15(2)(c) (amended by SI 2006/3449). As to civil partnerships see MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

8 Police Regulations 2003, SI 2003/527, reg 15(2)(d).

9 Ibid reg 15(2)(e).

10 Ibid reg 15(2)(ea) (added by SI 2005/2834). The Royal Parks Constabulary was abolished on 8 May 2006, and its functions are now carried out by the metropolitan police: see the Serious Organised Crime and Police Act 2005 s 161(1); Serious Organised Crime and Police Act 2005 (Commencement No 6 and Appointed Day) Order 2006, SI 2006/1085, art 2(a).

11 Police Regulations 2003, SI 2003/527, reg 15(2)(f).

12 Ibid reg 15(2)(g). The record of service kept in accordance with this provision must include particulars of all promotions, postings, removals, injuries received, periods of illness, commendations, rewards, sanctions other than cautions imposed under the Police (Conduct) Regulations 2004, SI 2004/645, reg 35 (see PARA 273 ante) or under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 17 (see PARA 294 ante) but: (1) a sanction of a fine or of a reprimand must be expunged after three years free from sanction other than a caution; (2) any other sanction must be expunged after five years free from sanction other than a caution; (3) a sanction under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 17 must be expunged after two years free from any such sanction: Police Regulations 2003, SI 2003/527, reg 15(3). In the case of a period free from sanction other than a caution which expired before 1 January 1989, a sanction must be expunged under reg 15(3) only if the member so requests: reg 15(4). Where following a review of a sanction imposed under the Police (Conduct) Regulations 2004, SI 2004/645, reg 35 or under the Police (Efficiency) Regulations 1999, SI 1999/732, reg 17 the reviewing officer substitutes for the decision of the conduct hearing or, as the case may be, inefficiency hearing a decision that the member concerned had not failed to meet the appropriate standard or, as the case may be, that the performance or attendance of the member concerned was not unsatisfactory, the sanction imposed by that hearing must be expunged forthwith: Police Regulations 2003, SI 2003/527, reg 15(5).

13 Ibid reg 15(6).

14 Ibid reg 16.

15 Ibid reg 17(1). The chief officer of police may append to the certificate any recommendation which he feels justified in giving, such as that his conduct was exemplary, his conduct was very good, or his conduct was good: reg 17(2). As to ranks see PARA 230 ante.

16 Ibid reg 17(3).

17 Ibid reg 18(1). Fingerprints of members of a police force taken in accordance with this provision must be kept separate from the fingerprints of persons whose fingerprints have been taken otherwise than in accordance therewith or with the Special Constables Regulations 1965, SI 1965/536, reg 1A(1) (as added) (see PARA 111 ante): Police Regulations 2003, SI 2003/527, reg 18(2) (amended by SI 2007/1162). As to the power of the police to take fingerprints from detained persons see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 421.

18 Or taken in accordance with the Special Constables Regulations 1965, SI 1965/536, reg 1A(1) (as added): see PARA 111 ante.

19 Police Regulations 2003, SI 2003/527, reg 18(3) (substituted by SI 2007/1162). However: (1) if on his ceasing to be a member of that force he becomes a special constable for the police area for which that force is maintained, his fingerprints must be kept in accordance with the Special Constables Regulations 1965, SI 1965/536, reg 1A(2) (as added) (see PARA 111 ante) (Police Regulations 2003, SI 2003/527, reg 18(3)(a) (as so substituted)); and (2) if by reason of a statutory transfer he becomes a member of another force, or if he is appointed as a special constable for another police area, his fingerprints and all copies and records of those fingerprints must be transferred to the chief officer of that other police force and kept in accordance with reg 18(2) (as amended) (see note 17 supra) or the Special Constables Regulations 1965, SI 1965/536, reg 1A(2) (as added) as the case may be (Police Regulations 2003, SI 2003/527, reg 18(3)(b) (as so substituted)). For the meaning of 'police area' see PARA 136 note 2 ante.

20 Ibid reg 19(1). Samples or the information derived from samples of members of a police force taken in accordance with this provision must be kept separate from the samples or the information derived from samples taken in accordance with the Police and Criminal Evidence Act 1984 s 63 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1029): Police Regulations 2003, SI 2003/527, reg 19(2). 'Sample' means a sample of hair, other than pubic hair, complete with roots; saliva; or a swab taken from the mouth: reg 19(4).

21 Ibid reg 19(3).

22 Ibid reg 19A(1)(a) (reg 19A added by SI 2005/2834). As to controlled drugs see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 264 et seq.

23 Police Regulations 2003, SI 2003/527, reg 19A(1)(b) (as added: see note 22 supra). As to probation see reg 12; and PARA 234 ante.

24 Ibid reg 19A(1)(c) (as added: see note 22 supra).

25 Ibid reg 19A(1)(d) (as added: see note 22 supra). The chief officer of a police force may require a member of the force who falls within this provision to give a sample of breath to be tested for evidence of alcohol in accordance with procedures determined by the Secretary of State: reg 19A(2) (as so added). As to the Secretary of State see PARA 107 note 15 ante. As to determinations see PARA 404 post.

26 Ibid reg 19A(1) (as added: see note 22 supra). A member of a police force who: (1) on giving a sample is found to have taken a controlled drug specified in a determination of the Secretary of State (reg 19A(3)(a) (as so added)); or (2) falls within reg 19A(1)(d) (as added) (see the text to note 25 supra) and, on giving a sample, is found to have more than 13 microgrammes of alcohol in 100 millilitres of breath (reg 19A(3)(b) (as so added)), must face such consequences as are specified in that determination (reg 19A(3) (as so added)).

## UPDATE

### 395 Personal records

NOTE 12--SI 2003/527 reg 15(3) amended, reg 15(4A)-(4C), (5A) added: SI 2008/2865. SI 2004/645 replaced: Police (Conduct) Regulations, SI 2008/2864.

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### **396. Duty to obey lawful orders; general duties.**

Every member of a police force<sup>1</sup> must carry out all lawful orders and must at all times punctually and promptly perform all appointed duties and attend to all matters within the scope of his office as a constable<sup>2</sup>.

The Secretary of State must determine<sup>3</sup>: (1) the normal periods of duty of a member of a police force<sup>4</sup>; (2) the periods allowed for refreshment<sup>5</sup>; (3) the variable shift arrangements which may be brought into operation by a chief officer of police<sup>6</sup>; (4) the manner and timing of the publication of duty rosters and the matters to be contained therein<sup>7</sup>; (5) the circumstances in which travelling time may be treated as duty<sup>8</sup>; (6) the circumstances in which a member of a police force is to be treated<sup>9</sup> as if he were a night worker<sup>10</sup>; and (7) the periods which are to be treated<sup>11</sup> as if they were additional periods of working time<sup>12</sup>.

The attendance of a member of a police force at one of the following meetings of the Police Federation<sup>13</sup>, that is to say, a quarterly meeting of a branch board, an ordinary meeting of a central committee, a meeting of the conferences arrangements committee, the annual meeting of the joint central committee with the joint central committee of the Scottish Police Federation and the central committee of the Police Federation for Northern Ireland, the annual meeting of a central conference or a women's regional conference, must be treated as an occasion of police duty<sup>14</sup>. Subject to the approval of the chief officer of police, the attendance of a member of a police force at an additional meeting of a branch board of the Police Federation or at a meeting of a committee of a branch board may be treated as an occasion of police duty<sup>15</sup>; and subject to the approval of the Secretary of State, the attendance of a member of a police force at a meeting of the Police Federation, other than such a meeting as is mentioned above<sup>16</sup>, may be treated as an occasion of police duty<sup>17</sup>.

1 For the meaning of 'member of a police force' see PARA 234 note 1 ante.

2 Police Regulations 2003, SI 2003/527, reg 20. As to the office of constable see PARA 101 et seq ante. Limitations are placed on the duties which may be assigned to members statutorily transferred from one force to another: see reg 21 (amended by SI 2003/2594).

3 As to the Secretary of State see PARA 107 note 15 ante. As to determinations see PARA 404 post.

4 Police Regulations 2003, SI 2003/527, reg 22(1)(a). In making a determination under this provision the Secretary of State may confer on the chief officer of police discretion to fix the time at which a period commences for the purposes of the determination and may determine the conditions subject to which that discretion is to be exercised: reg 22(2). For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

5 Ibid reg 22(1)(b).

6 Ibid reg 22(1)(c).

7 Ibid reg 22(1)(d).

8 Ibid reg 22(1)(e). In making a determination under this provision the Secretary of State may: (1) confer on the chief officer of police discretion to fix a limit on the travelling time which is to be treated as duty (reg 22(3)(a)); (2) confer on the police authority discretion to fix a limit on the amount of the expenses which may be reimbursed in respect of such travelling time (reg 22(3)(b)). 'Travelling time' means time spent by a member of a police force in travelling to and from his home: (a) where he is required to perform his normal daily period of duty in more than one tour of duty, between two tours (reg 22(4)(a)); or (b) where he is recalled to duty between two tours of duty, in consequence of his recall (reg 22(4)(b)). For the meaning of 'police authority' see PARA 139 note 1 ante.

- 9     le for the purposes of the Working Time Regulations 1998, SI 1998/1833, reg 2(1): see EMPLOYMENT vol 39 (2009) PARA 260.
- 10    Police Regulations 2003, SI 2003/527, reg 22(1)(f) (reg 22(1)(f), (g) added by SI 2006/3449).
- 11    le for the purposes of the Working Time Regulations 1998, SI 1998/1833, reg 2(1): see EMPLOYMENT vol 39 (2009) PARA 256.
- 12    Police Regulations 2003, SI 2003/527, reg 22(1)(g) (as added: note 10 supra).
- 13    As to the Police Federation see PARA 423 post.
- 14    Police Regulations 2003, SI 2003/527, reg 23(1).
- 15    Ibid reg 23(2).
- 16    le in ibid reg 23(1) or (2): see the text to notes 13-15 supra.
- 17    Ibid reg 23(3).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/397. Pay.

### **397. Pay.**

The pay of members of police forces<sup>1</sup> is determined by the Secretary of State<sup>2</sup>, and in making such a determination the Secretary of State may<sup>3</sup>: (1) confer such functions as he thinks fit in relation to the pay of members of a police force above the rank of chief superintendent<sup>4</sup> on the police authority<sup>5</sup>; (2) where the pay of a member of a police force of the rank of chief inspector or below is payable subject to such conditions as may be specified in the determination, confer on a member of that police force senior in rank to that member, or on a person employed by the police authority<sup>6</sup>, such functions as he thinks fit in relation to those conditions<sup>7</sup>.

In reckoning the service of a member of a police force<sup>8</sup> in any rank for the purposes of pay, account must be taken of all his service in that rank, whether in that or another police force, and service in a higher rank, on temporary promotion or otherwise, must be treated as if it had been service in that rank<sup>9</sup>.

The Secretary of State must determine the entitlement of members of police forces to pay during periods of sick leave<sup>10</sup>, and in making such a determination the Secretary of State may confer on the chief officer of police discretion to allow a member of a police force to receive more pay than that specified in the determination<sup>11</sup>. The Secretary of State must also determine the entitlement of female members of police forces to pay during periods of maternity leave<sup>12</sup>.

The intervals at which members of a police force are to be paid must be fixed by the police authority in accordance with such rules as the Secretary of State may determine<sup>13</sup>; and the Secretary of State must determine the manner of calculating monthly, weekly and daily pay<sup>14</sup>. Deductions must be made from the pay of a member of a police force who is in receipt of full pay in respect of certain social security benefits and statutory sick pay<sup>15</sup>.

The Secretary of State must determine the circumstances in which a member of a police force is entitled to receive a temporary salary and the rate of that salary<sup>16</sup>; and the circumstances in which a member of a police force is entitled to be temporarily promoted and the rate of his salary while so promoted<sup>17</sup>.

1     For the meaning of 'member of a police force' see PARA 234 note 1 ante. For the meaning of 'police force' see PARA 102 note 11 ante.

2 As to the Secretary of State see PARA 107 note 15 ante. As to determinations see PARA 404 post.

3 Police Regulations 2003, SI 2003/527, reg 24(1). This provision is expressed to be subject to regs 25-32: see the text and notes 11-17 infra; and PARAS 398, 400, 403 post. A determination under reg 24(1) has effect in relation to a university scholar subject to the provisions of any determination for the time being in force under reg 32 (see PARA 403 post): reg 24(5).

4 As to ranks see PARA 230 ante.

5 Police Regulations 2003, SI 2003/527, reg 24(1)(a). For the meaning of 'police authority' see PARA 139 note 1 ante.

6 le under the Police Act 1996 s 15 (as amended): see PARA 168 ante.

7 Police Regulations 2003, SI 2003/527, reg 24(1)(b).

8 Specific provision is made as to the reckoning of service in the British Transport Police and the former Royal Parks Constabulary: see *ibid* regs 41, 41A (added by SI 2005/2834). As to the British Transport Police see PARA 129 ante. Provision is also made as to the reckoning of service by constables in the Ministry of Defence Police and the Port of Tilbury Constabulary: see the Police Regulations 2003, SI 2003/527, reg 42. As to the office of constable see PARA 101 et seq ante. As to Ministry of Defence Police see PARA 120 et seq ante. As to the Port of Tilbury see PARA 790 post; and as to harbour police forces see PARA 759 post. Provision is also made as to the reckoning of service in an airport constabulary (see reg 43); and as to the reckoning by constables of overseas police service (see reg 44). As to civil aviation and airport constables see PARA 132 ante. As to officers engaged on service outside their forces see PARA 428 post.

9 *Ibid* reg 24(2). This provision is expressed to be subject to regs 42-44 (see note 8 supra) and the Police Act 1996 s 97(3) (see PARA 428 post). For the purposes of the Police Regulations 2003, SI 2003/527, reg 24, in reckoning a member's service in any rank:

- 6 (1) that service must be treated as unbroken by, and including, any period of service in Her Majesty's forces which he is entitled to reckon as pensionable service (reg 24(3)(a));
- 7 (2) except where the police authority in the circumstances of a particular case otherwise determines with the approval of the Secretary of State, no account may be taken of any previous service in that rank which terminated in his reduction in rank as a punishment but any previous service in a higher rank which so terminated must be treated as if it had been service in the rank to which the member was reduced (reg 24(3)(b));
- 8 (3) no account may be taken of any performance of the duties of that rank in respect of which a temporary salary is payable under reg 27 (see the text to notes 16-17 infra) (reg 24(3)(c));
- 9 (4) any period of unpaid leave must be disregarded (reg 24(3)(d));
- 10 (5) any part-time service must be taken into account as though it were full-time service (reg 24(3)(e));
- 11 (6) in the case of a female member who has taken one or more periods of maternity leave, in respect of each maternity period:
  1. (a) where that leave has been for 26 weeks or more, account must be taken of the first 26 weeks whilst on maternity leave;  
1
  2. (b) where that leave has been for less than 26 weeks, account must be taken of any period spent on maternity leave,  
2
- 12 and where that member has, at the beginning of the fourteenth week before the expected date of birth of the member's child, as given in accordance with a determination under reg 33(7) (see PARA 401 post), served continuously as a member of a police force for a period of not less than 26 weeks, account must in addition be taken of any period (not being a period of which account has been taken under head (a) or head (b) supra) spent on maternity leave during the period of 29 weeks beginning with the week in which the child is born (reg 24(3)(f) (substituted by SI 2006/3449));

- 13 (7) account must be taken of any period of parental leave taken in accordance with a determination under the Police Regulations 2003, SI 2003/527, reg 33(8)(b) (see PARA 401 post) (reg 24(3)(g));
- 14 (8) in the case of a member who has taken one or more periods of adoption leave, in respect of each adopted child:
  3. (a) where that leave has been for one week or more, account must be taken of the first week whilst on adoption leave;  
3
  4. (b) where that leave has been for less than one week, account must be taken of any period spent on adoption leave,  
4
- 15 and where that member has, at the end of the week in which they are notified of being matched with a child for adoption, served continuously as a member of a police force for a period of not less than 26 weeks, account must in addition be taken of any period spent on adoption leave during the period of 26 weeks beginning with the week in which the child is placed with the officer for adoption (reg 24(3)(h) (reg 24(3)(h)-(j) added by SI 2006/3449));
- 16 (9) in the case of a member who has taken one or more periods of maternity support leave, account must be taken of any period of such leave taken in accordance with a determination under the Police Regulations 2003, SI 2003/527, reg 33(8)(a) (see PARA 401 post) (reg 24(3)(i) (as so added));
- 17 (10) in the case of a member who has taken one or more periods of adoption support leave, account must be taken of any period of such leave taken in accordance with a determination under reg 33(8)(d) (see PARA 401 post) (reg 24(3)(j) (as so added)),

and, in the case of a member of a police force of a rank higher than that of chief inspector, reg 24(2) has effect subject to any contrary agreement so far as it relates to the reckoning of previous service in that or another force, not being a force from which he was statutorily transferred to his present force (reg 24(3)). As to pensionable service see PARAS 410, 418 post. As to leave see PARA 401 post. As to part-time service see PARA 230 ante.

Nothing in reg 24 (as amended) affects the operation of any provisions of the Police (Conduct) Regulations 2004, SI 2004/645, and, in relation to a member of a police force suspended or fined thereunder the provisions of the Police Regulations 2003, SI 2003/527, Sch 2 paras 1, 3 (Sch 2 para 1 as amended) or Sch 2 para 4 have effect: reg 24(4). Schedule 2 (as amended) sets out the effect of disciplinary action on pay and allowances. As to the Police (Conduct) Regulations 2004, SI 2004/645, see PARA 245 et seq ante.

- 10 le taken in accordance with a determination under the Police Regulations 2003, SI 2003/527, reg 33(5): see PARA 401 post.
- 11 Ibid reg 28.
- 12 Ibid reg 29.
- 13 Ibid reg 30(1).
- 14 Ibid reg 30(2).
- 15 See ibid reg 31.
- 16 Ibid reg 27(1).
- 17 Ibid reg 27(2). As to promotion generally see PARAS 236-238 ante.

## UPDATE

### 397 Pay

NOTE 9--SI 2004/645 replaced: Police (Conduct) Regulations, SI 2008/2864.



Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/398. Overtime.

### **398. Overtime.**

The Secretary of State must determine<sup>1</sup> the circumstances and manner in which a member of a police force<sup>2</sup> is to be compensated in respect of time, known as 'overtime': (1) for which he remains on duty after his tour of duty ends<sup>3</sup>; or (2) for which he is recalled between two tours of duty<sup>4</sup>; or (3) which forms part of a tour of duty which he is required to begin earlier than the rostered time without due notice<sup>5</sup> and on a day when he has already completed his normal daily period of duty<sup>6</sup>. In making such a determination, the Secretary of State may confer on the chief officer of police<sup>7</sup> discretion to fix the day on which a period commences for the purposes of the determination<sup>8</sup>, to fix the period within which time off in compensation for overtime is to be granted<sup>9</sup>, to allow time in addition to that specified in the determination to be taken into account in computing any period of overtime<sup>10</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to determinations see PARA 404 post.

2 For the meaning of 'member of a police force' see PARA 234 note 1 ante.

3 Police Regulations 2003, SI 2003/527, reg 25(1)(a). 'Tour of duty', in relation to a member of a police force for whom variable shift arrangements are in operation under reg 22(1)(c) (see PARA 396 ante), means rostered shift: reg 25(2).

4 Ibid reg 25(1)(b). 'Recall' does not include a warning to be in readiness for duty if required: reg 25(2).

5 'Due notice' means notice given at least eight hours before the revised starting time of the rostered tour of duty in question: ibid reg 25(2).

6 Ibid reg 25(1)(c). 'Normal daily period of duty' is to be construed in accordance with reg 22 (see PARA 396 ante): reg 25(2).

7 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

8 Police Regulations 2003, SI 2003/527, reg 25(3)(a).

9 Ibid reg 25(3)(b).

10 Ibid reg 25(3)(c).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/399. Allowances and expenses.

### **399. Allowances and expenses.**

Subject to the provisions about replacement allowance<sup>1</sup>, the Secretary of State must determine<sup>2</sup> the entitlement of members of a police force<sup>3</sup> to any allowance, and in making such a determination the Secretary of State may confer on the police authority<sup>4</sup> and the chief officer of police<sup>5</sup> such functions: (1) in relation to the calculation of an allowance<sup>6</sup>; (2) where the payment of an allowance is subject to such conditions as may be specified in the determination, in relation to those conditions<sup>7</sup>, as he thinks fit<sup>8</sup>. No allowances may be paid to a member of a police force except as provided by or under the Police Regulations 2003<sup>9</sup> or approved by the Secretary of State, and the amounts and conditions of payment of such allowances must be as so provided or approved<sup>10</sup>.

The Secretary of State must determine the entitlement of members of a police force to reimbursement of any expenses incurred by such a member in or in connection with the execution of his duty<sup>11</sup>. Where, in making such a determination, the Secretary of State specifies conditions subject to which expenses are to be reimbursed, he may in that determination confer on the police authority<sup>12</sup> and the chief officer of police<sup>13</sup> such functions in relation to those conditions as he thinks fit<sup>14</sup>.

If a member of a police force who is regularly in receipt of an allowance to meet an expense which ceases during absence from duty is placed upon the sick list or is on maternity leave<sup>15</sup>, the allowance is payable during absence from duty up to a period of a month<sup>16</sup>, but thereafter, during the remainder of the absence from duty, payment may be suspended at the discretion of the chief officer of police<sup>17</sup>.

1 As to replacement allowance see the Police Regulations 2003, SI 2003/527, reg 38, Sch 3 (amended by SI 2005/2834; SI 2007/1160).

2 As to the Secretary of State see PARA 107 note 15 ante. As to determinations see PARA 404 post.

3 For the meaning of 'member of a police force' see PARA 234 note 1 ante. The Police Regulations 2003, SI 2003/527, regs 34-39 have effect, subject to the provisions of Sch 2 paras 2 and 3, in relation to a member of a police force suspended under the Police (Conduct) Regulations 2004, SI 2004/645: Police Regulations 2003, SI 2003/527, reg 37. As to suspension from duty see PARA 249 ante.

4 Ibid reg 34(1)(a). For the meaning of 'police authority' see PARA 139 note 1 ante.

5 Ibid reg 34(1)(b). For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

6 Ibid reg 34(1)(i).

7 Ibid reg 34(1)(ii).

8 Ibid reg 34(1).

9 I.e. the Police Regulations 2003, SI 2003/527.

10 Ibid reg 34(2). Nothing in reg 34 applies to the reimbursement of expenses incurred by a member of a police force in the execution of his duty, being expenses authorised either generally or specifically by the police authority in respect of which no allowance is payable under the regulations and no determination has been made under reg 35 (see the text to notes 11-14 infra): reg 34(3). Without prejudice to the generality of reg 34(2), a member of a police force who is engaged on duty at the request of any person who has agreed to pay the police authority for the member's services is not entitled to any payment for those services except as provided by or under the Police Regulations 2003, SI 2003/527; and any payments made in pursuance of that agreement must be made by that person to the police authority: reg 39. As to payment for police services see PARAS 172, 193 ante. There is no power to reduce the amount of any payments made in respect of allowances to take account of previous overpayments: see *R v Chief Constable of the Greater Manchester Police ex p Moorehouse* (1985) (unreported); *R v South Wales Police Authority ex p Walters* (16 February 2000, unreported).

11 Police Regulations 2003, SI 2003/527, reg 35(1). The expenses that may be reimbursed under such a determination include tax paid by a chief officer of police in connection with removal or relocation expenses associated with his appointment: reg 35(3) (added by SI 2006/3449). As to the duties of a police officer see PARA 478 post.

12 Police Regulations 2003, SI 2003/527, reg 35(2)(a).

13 Ibid reg 35(2)(b).

14 Ibid reg 35(2).

15 As to sick leave and maternity leave see PARA 401 post.

16 For the meaning of 'month' see PARA 140 note 17 ante.

17 Police Regulations 2003, SI 2003/527, reg 36.

## UPDATE

### 399 Allowances and expenses

NOTE 1--SI 2003/527 Sch 3 amended: SI 2007/1160.

NOTE 3--SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/400. Public holidays and rest days.

### 400. Public holidays and rest days.

The Secretary of State must determine<sup>1</sup> the circumstances and manner in which a member of a police force<sup>2</sup> is to be granted leave or otherwise compensated in respect of time spent on duty on public holidays<sup>3</sup> or rostered rest days<sup>4</sup>. In making such a determination the Secretary of State may confer on the chief officer of police<sup>5</sup> discretion: (1) to fix the time at which, or the day on which, a period commences for the purposes of the determination<sup>6</sup>; (2) to fix the period within which time off in compensation for time spent on duty is to be granted<sup>7</sup>; (3) to fix a limit on the time occupied by a member of a police force in travelling to and from his place of duty which is to be included in a period of duty for the purposes of the determination<sup>8</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to determinations see PARA 404 post.

2 For the meaning of 'member of a police force' see PARA 234 note 1 ante.

3 Police Regulations 2003, SI 2003/527, reg 26(1)(a). 'Public holiday' means Christmas Day, 26 December (if it falls on a Saturday or a Sunday), 1 January (if it so falls), Good Friday or a bank holiday: reg 3(1). As to bank holidays see TIME vol 97 (2010) PARA 321.

4 Ibid reg 26(1)(b). 'Rostered rest day', in relation to a member of a police force who is required to do duty on that day, means a day which according to the duty roster was, immediately before he was so required to do duty, to have been a rest day for the member: reg 26(1). As to hours of duty see PARA 396 ante. As to leave generally see PARA 401 post.

5 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

6 Police Regulations 2003, SI 2003/527, reg 26(2)(a).

7 Ibid reg 26(2)(b).

8 Ibid reg 26(2)(c).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/401. Leave.

### 401. Leave.

Every member of a police force<sup>1</sup> must, so far as the exigencies of duty permit, be granted in each leave year<sup>2</sup> such annual leave as may be determined by the Secretary of State<sup>3</sup>. In such a determination the Secretary of State must make provision for the compensation of a member

of a police force for being recalled to duty during a period of annual leave<sup>4</sup>. In making such a determination the Secretary of State may confer on the chief officer of police<sup>5</sup> discretion: (1) to grant such additional days of annual leave in any leave year in such circumstances and subject to such conditions as the Secretary of State may determine<sup>6</sup>; and (2) subject to such conditions as the Secretary of State may determine, to allow days of annual leave granted under these provisions to be taken as a single period, or as single days, or in periods of more than one day or as half days<sup>7</sup>. Annual leave granted under these provisions must be additional to the days on which the member is not required to perform police duties in accordance with a determination<sup>8</sup> in respect of public holidays and rest days<sup>9</sup>.

A member of a police force is not entitled to be absent from duty on account of injury or illness otherwise than in such circumstances as are determined by the Secretary of State, and in making such a determination the Secretary of State may confer on the police authority power to appoint, or approve the appointment of, a medical practitioner for the purposes of any function to be carried out under the determination<sup>10</sup>.

A female member of a police force who is pregnant has, in such circumstances as are determined by the Secretary of State, the right not to be unreasonably refused special leave from duty to enable her to keep an appointment for the purpose of receiving antenatal care<sup>11</sup>. A female member of a police force qualifies for maternity leave in such circumstances as are determined by the Secretary of State<sup>12</sup>.

A member of a police force must, so far as the exigencies of duty permit, be granted such maternity support leave<sup>13</sup>, parental leave<sup>14</sup>, adoption leave<sup>15</sup>, and adoption support leave<sup>16</sup> in such circumstances as the Secretary of State may determine<sup>17</sup>. A member of a police force is, so far as the exigencies of duty permit, entitled to be permitted to take a reasonable amount of time off during periods of duty in order to take such action, and for such purposes, in respect of a dependant of that member, and subject to such conditions, as are determined by the Secretary of State<sup>18</sup>.

The Secretary of State may determine that any period of leave or time off taken in accordance with a determination under these provisions<sup>19</sup> is to be treated as a period of duty<sup>20</sup>. The Secretary of State must determine the circumstances in which, and the terms on which, a member of a police force is entitled to take a career break<sup>21</sup>.

1 For the meaning of 'member of a police force' see PARA 234 note 1 ante.

2 'Leave year' means that period of 12 months beginning on such date as may from time to time be determined by the police authority: Police Regulations 2003, SI 2003/527, reg 33(1). For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'month' see PARA 140 note 17 ante.

3 Ibid reg 33(1). As to the Secretary of State see PARA 107 note 15 ante. As to determinations see PARA 404 post.

4 Ibid reg 33(3). As to hours of duty see PARA 396 ante.

5 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

6 Police Regulations 2003, SI 2003/527, reg 33(2)(a).

7 Ibid reg 33(2)(b).

8 Ie under ibid reg 26: see PARA 400 ante.

9 Ibid reg 33(4).

10 Ibid reg 33(5). This provision and any determination thereunder applies to a member who is in quarantine as it applies to a member who is ill, subject, in the case of such a determination, to such modifications as may be determined by the Secretary of State: reg 33(11).

11 Ibid reg 33(6).

12 Ibid reg 33(7).

13 Ibid reg 33(8)(a). 'Maternity support leave' means leave to enable support to be given to an expectant mother at or around the time of birth: reg 33(8).

14 Ibid reg 33(8)(b).

15 Ibid reg 33(8)(c).

16 Ibid reg 33(8)(d) (added by SI 2006/3449).

17 Police Regulations 2003, SI 2003/527, reg 33(8).

18 Ibid reg 33(9). For this purpose the Secretary of State may determine the meaning of 'dependant' in relation to members of a police force: reg 33(9).

19 Ie under ibid reg 33(1), (6), (8) or (9): see the text to notes 1-3, 11, 13-18 supra.

20 Ibid reg 33(10).

21 Ibid reg 33(12) (reg 33(12), (13) added by SI 2006/3449). Any such determination is without prejudice to any arrangement in place under which a member is taking a career break at 1 February 2007: see the Police Regulations 2003, SI 2003/527, reg 33(13) (as so added).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/402. Uniform and equipment.

#### **402. Uniform and equipment.**

The Secretary of State must determine<sup>1</sup> the circumstances in which and the conditions subject to which uniform and equipment is to be issued by the police authority<sup>2</sup> to a member of a police force<sup>3</sup> of the rank of constable or sergeant<sup>4</sup>; and in making such a determination the Secretary of State may confer on the police authority discretion to specify the type of uniform and equipment to be issued<sup>5</sup>, and to issue uniform and equipment to members of the police force in ranks other than constable or sergeant<sup>6</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to determinations see PARA 404 post.

2 For the meaning of 'police authority' see PARA 139 note 1 ante.

3 For the meaning of 'member of a police force' see PARA 234 note 1 ante.

4 Police Regulations 2003, SI 2003/527, reg 45. As to ranks see PARA 230 ante. As to the office of constable see PARA 101 et seq ante.

5 Ibid reg 45(a).

6 Ibid reg 45(b).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/403. University scholars.

#### **403. University scholars.**

The Secretary of State must determine<sup>1</sup> how the provisions relating to duty<sup>2</sup> and pay<sup>3</sup> and any determination made thereunder have effect in relation to a university scholar<sup>4</sup>, and in making such a determination the Secretary of State may confer on the police authority discretion to determine whether or not the conditions subject to which a university scholar is entitled to any payment<sup>5</sup> are met<sup>6</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to determinations see PARA 404 post.

2 Ie the provisions of the Police Regulations 2003, SI 2003/527, Pt 3 (regs 20-23) (as amended): see PARA 396 ante.

3 Ie the provisions of ibid Pt 4 (regs 24-31): see PARAS 397-398, 400 ante.

4 'University scholar' means a member of a police force on a course of university study nominated by the Secretary of State or by the police authority maintaining the police force of which he is a member following arrangements approved by the Secretary of State: ibid reg 3(1). For the meaning of 'member of a police force' see PARA 234 note 1 ante. For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'police force' see PARA 102 note 11 ante.

5 Ie under ibid Pt 4: see PARAS 397-398, 400 ante.

6 Ibid reg 32.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/404. Determinations.

#### **404. Determinations.**

Before making a determination under any provision of the Police Regulations 2003<sup>1</sup> relating to hours of duty, leave, pay and allowances, pensions or uniform and equipment<sup>2</sup>, the Secretary of State<sup>3</sup> must take into consideration any recommendation made by the Police Negotiating Board<sup>4</sup> and must supply the Board with a draft of the determination<sup>5</sup>. Before making a determination under any provision of the regulations relating to any other matter, the Secretary of State must supply the Police Advisory Board for England and Wales<sup>6</sup> with a draft of the determination, and take into consideration any representations made by that Board<sup>7</sup>.

A determination under any provision of the regulations may make different provision for different cases and circumstances<sup>8</sup>. A determination under any such provision for regulating pay and allowances may be made with retrospective effect to any date specified in the determination, but this must not be construed as authorising the pay or allowances payable to any person to be reduced retrospectively<sup>9</sup>.

1 Ie the Police Regulations 2003, SI 2003/527.

2 Ie the matters mentioned in the Police Act 1996 s 61(1): see PARA 424 post.

3 As to the Secretary of State see PARA 107 note 15 ante.

4 As to the Police Negotiating Board see PARA 424 post.

5 Police Regulations 2003, SI 2003/527, reg 46(1). The Police Act 1996 s 62(2) (as amended) (see PARA 424 post) applies in relation to a recommendation to be made for these purposes as it applies in relation to a recommendation to be made for the purposes of s 62(1) (as amended): Police Regulations 2003, SI 2003/527, reg 46(1).

6 As to the Police Advisory Board for England and Wales see PARA 425 post.

7 Police Regulations 2003, SI 2003/527, reg 46(2).

8 Ibid reg 46(4).

9 Ibid reg 46(3).

## UPDATE

### 404 Determination

NOTE 4--The statutory meaning of SI 2003/527 reg 46 does not require any special weight to be given to a recommendation of the Police Negotiating Board; it allows the decision-maker wide discretion to consider any recommendations: *R (on the application of Staff Side of the Police Negotiating Board) v Secretary of State for the Home Department* [2008] EWHC 1173 (Admin), [2008] All ER (D) 101 (Jun).

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### 405. Discrimination.

It is unlawful for a person<sup>1</sup>, in relation to employment by him at an establishment in Great Britain<sup>2</sup>, to discriminate on grounds of sex, race, disability, age, sexual orientation, or religion or belief, against a person as an applicant for employment or as an employee<sup>3</sup>. For these purposes<sup>4</sup>, the holding of the office of constable<sup>5</sup> (whether or not as a member of a police force<sup>6</sup>) is treated as employment by the chief officer of police<sup>7</sup> or, as the case may be, the police authority<sup>8</sup> as respects any act done by the chief officer or the authority in relation to a constable or that office<sup>9</sup>.

Regulations made under the Police Act 1996<sup>10</sup> must not treat men and women differently except<sup>11</sup> as to requirements relating to height, uniform or equipment, or allowances in lieu of uniform or equipment<sup>12</sup>, or so far as special treatment is accorded to women in connection with pregnancy or childbirth<sup>13</sup>, or in relation to pensions to or in respect of special constables or police cadets<sup>14</sup>.

In carrying out its functions<sup>15</sup>, a police authority must have due regard to: (1) the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between persons of different racial groups<sup>16</sup>; (2) the need to eliminate unlawful discrimination and harassment, and to promote equality of opportunity between men and women<sup>17</sup>; (3) the need to eliminate unlawful discrimination on the grounds of disability and harassment of disabled persons, to promote equality of opportunity between disabled persons and other persons, to take steps to take account of disabled persons' disabilities (even where that involves treating disabled persons more favourably than other persons), to promote positive attitudes towards disabled persons, and to encourage participation by disabled persons in public life<sup>18</sup>.

It is unlawful for a police authority, in carrying out its functions, to do any act which constitutes discrimination on grounds of race<sup>19</sup>, religion or belief<sup>20</sup> or sexual orientation<sup>21</sup>, to discriminate against a disabled person<sup>22</sup>, or to do any act which constitutes discrimination or harassment on the grounds of sex<sup>23</sup>.

1 For the meaning of 'person' see PARA 110 note 6 ante.

2 For the meaning of 'Great Britain' see PARA 102 note 7 ante.

3 See the Sex Discrimination Act 1975 s 6 (as amended); the Race Relations Act 1976 s 4 (as amended); the Disability Discrimination Act 1995 s 4 (as substituted); the Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 7; the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 6; the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 6; and DISCRIMINATION.

4 le for the purposes of the Sex Discrimination Act 1975 Pt II (ss 6-20A) (as amended); the Race Relations Act 1976 Pt II (ss 4-16) (as amended); the Disability Discrimination Act 1995 Pt II (ss 3A-18E) (as amended); the Employment Equality (Age) Regulations 2006, SI 2006/1031, Pt 2 (regs 7-24); the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, Pt 2 (regs 6-21) (as amended); and the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, Pt 2 (regs 6-21) (as amended).

5 As to the office of constable see PARA 101 et seq ante.

6 For the meaning of 'police force' see PARA 102 note 11 ante.

7 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

8 For the meaning of 'police authority' see PARA 139 note 1 ante.

9 Sex Discrimination Act 1975 s 17(1) (amended by the Sex Discrimination Act 1975 (Amendment) Regulations 2003, SI 2003/1657, reg 2(1), (2)); Race Relations Act 1976 s 76A(1), (2) (s 76A added by the Race Relations (Amendment) Act 2000 s 4); Disability Discrimination Act 1995 s 64A(1) (s 64A added by the Disability Discrimination Act 1995 (Amendment) Regulations 2003, SI 2003/1673, regs 3(1), 25); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 13(1); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 11(1) (amended by SI 2006/594); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 11(1) (amended by SI 2006/594). A police cadet is similarly treated: Sex Discrimination Act 1975 s 17(6); Race Relations Act 1976 s 76A(1) (as so added); Disability Discrimination Act 1995 s 64A(6) (as so added); Employment Equality (Age) Regulations 2006, SI 2006/1031, reg 13(6); Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 11(6); Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 11(6). As to police cadets see PARAS 113-118 ante. As to liability for acts of discrimination see PARA 105 ante.

10 le regulations made under the Police Act 1996 s 50 (as amended) (see PARA 228 ante), s 51 (as amended) (see PARA 110 ante), or s 52 (as amended) (see PARA 114 ante).

11 Sex Discrimination Act 1975 s 17(2) (amended by the Police Act 1996 Sch 7 para 27).

12 Sex Discrimination Act 1975 s 17(2)(a). Nothing in Pt II (ss 6-20A) (as amended) renders unlawful any discrimination between male and female constables as to these matters: see s 17(3).

13 Ibid s 17(2)(b).

14 Ibid s 17(2)(c). As to special constables see PARAS 108-112 ante.

15 As to the functions of police authorities see PARA 156 et seq ante.

16 See the Race Relations Act 1976 s 71(1), Sch 1A paras 55, 57, 58 (s 71 substituted, and Sch 1A added, by the Race Relations (Amendment) Act 2000 s 2(2), Sch 1); and DISCRIMINATION.

17 See the Sex Discrimination Act 1975 s 76A(1) (s 76A added by the Equality Act 2006 s 84(1)); and DISCRIMINATION.

18 See the Disability Discrimination Act 1995 s 49A(1) (added by the Disability Discrimination Act 2005 s 3); and DISCRIMINATION.

19 See Race Relations Act 1976 s 19B (added by the Race Relations (Amendment) Act 2000 s 1); and DISCRIMINATION.

20 See the Equality Act 2006 s 52(1); and DISCRIMINATION.

21 See the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 8(1); and DISCRIMINATION.

22 See the Disability Discrimination Act 1995 s 21B (added by the Disability Discrimination Act 2005 s 2); and DISCRIMINATION.



23 See the Sex Discrimination Act 1975 s 21A (added by the Equality Act 2006 s 83(1)); and DISCRIMINATION.

## UPDATE

### 405-406 Discrimination, Health and safety at work

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(v) Conditions of Service and Emoluments/406. Health and safety at work.

#### 406. Health and safety at work.

For the purposes of Part I of the Health and Safety at Work etc Act 1974<sup>1</sup>, a person who, otherwise than under a contract of employment, holds the office of constable<sup>2</sup> or an appointment as a police cadet<sup>3</sup> is treated as an employee of the relevant officer<sup>4</sup>.

For the purposes of regulations made by the Secretary of State<sup>5</sup> which provide for the appointment by recognised trade unions of safety representatives from among employees, the Police Federation for England and Wales<sup>6</sup> and any body recognised by the Secretary of State<sup>7</sup> must be treated as a trade union recognised by each chief officer of police in England and Wales<sup>8</sup>.

A person holding the office of constable is at work throughout the time when he is on duty but not otherwise<sup>9</sup>.

Members of police forces and police cadets are offered protection from suffering detriment in health and safety cases<sup>10</sup> and have the right not to be dismissed on certain grounds relating to health and safety<sup>11</sup>.

There is to be paid out of the relevant fund<sup>12</sup>: (1) any damages, costs or expenses awarded against the responsible officer<sup>13</sup> in any proceedings brought against him<sup>14</sup> in respect of a breach of health and safety regulations<sup>15</sup> and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings<sup>16</sup>; (2) any sum required in settlement of any such claim made against the responsible officer in respect of an alleged breach of health and safety regulations, if the settlement is approved by the relevant authority<sup>17</sup>; (3) any compensation, costs or expenses awarded against the responsible officer in any proceedings brought against him at an employment tribunal<sup>18</sup>, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings<sup>19</sup>; and (4) any sum required in settlement of any claim made against the responsible officer at an employment tribunal, if the settlement is approved by the relevant authority<sup>20</sup>.

Any fine imposed on the responsible officer on conviction of an offence under Part I of the Health and Safety at Work etc Act 1974<sup>21</sup>, any costs or expenses ordered to be paid by him on conviction of such an offence and any costs or expenses incurred by him in connection with proceedings for such an offence may, with the approval of the relevant authority, be paid out of the relevant fund<sup>22</sup>.

<sup>1</sup> ie the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK. See also the Police (Health and Safety) Regulations 1999, SI 1999/860.

2 As to the office of constable see PARA 101 et seq ante.

3 As to police cadets see PARAS 113-118 ante.

4 Health and Safety at Work etc Act 1974 s 51A(1) (s 51A added by the Police (Health and Safety) Act 1997 s 1). 'The relevant officer': (1) in relation to a member of a police force, special constable or police cadet appointed for a police area, means the chief officer of police; (2) in relation to a member of a police force seconded to the Serious Organised Crime Agency to serve as a member of its staff, means that Agency; and (3) in relation to any other person holding the office of constable or an appointment as police cadet, means the person who has direction and control of the body of constables or cadets in question: Health and Safety at Work etc Act 1974 s 51A(2) (as so added; and amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 para 20). For the meaning of 'police force' see PARA 102 note 11 ante. As to special constables see PARAS 108-112 ante. For the meaning of 'police area' see PARA 136 note 2 ante. For the meaning of 'chief officer of police' see PARA 105 note 7 ante. As to the Serious Organised Crime Agency see PARA 430 et seq post.

5 The regulations made under the Health and Safety at Work etc Act 1974 s 2(4): see EMPLOYMENT vol 40 (2009) PARA 1022. As to the Secretary of State see PARA 107 note 15 ante.

6 As to the Police Federation see PARA 423 post.

7 The for the purposes of the Police Act 1996 s 64 (as amended): see PARA 426 post.

8 See the Health and Safety at Work etc Act 1974 s 51A(3)(a), (c) (as added: see note 4 supra).

Regulations made under the Health and Safety at Work etc Act 1974 s 2(4) may provide, in relation to persons within note 4 heads (2) and (3) supra, that a body specified in the regulations is to be treated as a recognised trade union recognised by such person as may be specified: s 51A(4) (as so added).

9 Ibid s 52(1)(bb) (added by the Police (Health and Safety) Act 1997 s 2). As to duty see PARA 396 ante.

10 See the Employment Rights Act 1996 s 49A (added by the Police (Health and Safety) Act 1997 s 3; and amended by the Serious Organised Crime and Police Act 2005 s 158(2)(a), (3)). As to the protection given in health and safety cases see the Employment Rights Act 1996 s 44 (as amended); and EMPLOYMENT vol 39 (2009) PARA 544.

11 See ibid s 134A (added by the Police (Health and Safety) Act 1997 s 4; and amended by the Serious Organised Crime and Police Act 2005 ss 59, 158(2)(b), (3), Sch 4 paras 84, 87). As to the grounds of unfair dismissal see the Employment Rights Act 1996 s 100 (as amended); and EMPLOYMENT vol 40 (2009) PARA 742.

12 'The relevant fund' means: (1) in relation to a chief officer of police, the police fund; (2) in relation to any other responsible officer (see note 13 infra), money provided by the relevant authority: Police (Health and Safety) Act 1997 s 5(3) (definition amended by the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 para 93(b), Sch 17 Pt 2). 'The relevant authority' means: (a) in relation to a chief officer of police in England and Wales, the police authority; (b) in relation to any other responsible officer, the authority by whom the constables or cadets in question are paid: Police (Health and Safety) Act 1997 s 5(3) (definition amended by the Serious Organised Crime and Police Act 2005 Sch 4 para 93(a), Sch 17 Pt 2). For the meaning of 'police fund' see PARA 167 note 3 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.

13 'The responsible officer' means: (1) in relation to a police force or police cadets appointed for a police area, the chief officer of police; and (2) in relation to any other body of constables or cadets, the person who has the direction and control of the body of constables or cadets in question: Police (Health and Safety) Act 1997 s 5(3) (definition amended by the Serious Organised Crime and Police Act 2005 Sch 4 para 93(c), Sch 17 Pt 2).

14 The by virtue of the Health and Safety at Work etc Act 1974 s 51A (as added): see the text to notes 1-8 supra.

15 For the meaning of 'health and safety regulations' see the Health and Safety at Work etc Act 1974 s 15(1) (as substituted); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 424 (definition applied by the Police (Health and Safety) Act 1997 s 5(3)).

16 Ibid s 5(1)(a).

17 Ibid s 5(1)(b).

18 The under the Employment Rights Act 1996 s 48 (as amended) (see EMPLOYMENT vol 39 (2009) PARA 554) by virtue of s 49A (as added) (see the text and note 10 supra), or under s 111 by virtue of s 134A (as added) (see the text and note 11 supra): see the Police (Health and Safety) Act 1997 s 5(1)(c)(i), (ii).

19 Ibid s 5(1)(c).

20 Ibid s 5(1)(d).

21 le by virtue of the Health and Safety at Work etc Act 1974 s 51A(1) (as added): see the text to notes 1-4 supra.

22 Police (Health and Safety) Act 1997 s 5(2).

## UPDATE

### 405-406 Discrimination, Health and safety at work

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/ (vi) Pensions/A. IN GENERAL/407. Police pensions regulations.

## (vi) Pensions

### A. IN GENERAL

#### 407. Police pensions regulations.

With the consent of the Minister for the Civil Service<sup>1</sup> and after consultation with the Police Negotiating Board<sup>2</sup>, the Secretary of State<sup>3</sup> may make regulations as respects the pensions<sup>4</sup> payable to or in respect of members of police forces<sup>5</sup> and persons treated as such for pension purposes<sup>6</sup>.

Police pensions regulations govern: (1) the pensions which are to be paid to and in respect of members of police forces, whether as of right or otherwise<sup>7</sup>; (2) the contributions in respect of pension rights<sup>8</sup> which are to be made by members of police forces<sup>9</sup>; (3) the times at which and the circumstances in which members are or may be required to retire otherwise than on grounds of misconduct<sup>10</sup>; (4) the preservation of pension rights on leaving service in a police force and entering other pensionable service or employment, and payment and receipt by police authorities of transfer values and other lump sum payments made for the purpose of restoring pension rights<sup>11</sup>. Provision may also be made with respect to the variation, suspension, termination and forfeiture of pensions<sup>12</sup>, and as to the circumstances in which they may be applied otherwise than in payment to the member concerned<sup>13</sup>. Regulations may be made with retrospective effect<sup>14</sup> and, subject to certain safeguards, so as to apply in relation to pensions to or in respect of persons who have ceased to serve as members of police forces<sup>15</sup>. Serving members also enjoy certain safeguards<sup>16</sup>. Unless he elects otherwise, a member serving on the date regulations come into force is not by those regulations to have any change made in the age at which he may be compulsorily retired<sup>17</sup>, nor is he to be adversely affected by a change in the scales of pensions which may become payable to him on retiring after a prescribed period of service or on grounds of ill-health, excluding injury received in the execution of duty<sup>18</sup>. Regulations infringing the safeguards for serving members are not invalid but if either the Secretary of State is satisfied, or the High Court holds, that there has been an infringement, the Secretary of State is under a duty to cure the infringement as soon as may be by further regulations having the necessary retrospective effect<sup>19</sup>.

There are currently two police pension schemes created under these provisions. The first, the 1987 scheme<sup>20</sup>, was closed to new entrants on 5 April 2006 but continues to have effect for all officers who ceased to serve before 6 April 2006 and for all officers who joined the service before that date and who are still in service on or after that date provided they do not join the 2006 scheme<sup>21</sup>. The second scheme, the 2006 scheme<sup>22</sup>, was the result of a review of police pensions following concerns that the 1987 scheme might no longer meet the needs of a modern police service and about the rising cost of police pensions, and is intended to modernise police pensions to make them more flexible and affordable for future entrants<sup>23</sup>. This scheme was introduced on 6 April 2006 and applies to all new entrants to the police service after that date, to all those who re-join the service on or after that date (apart from the few exceptions) and all other officers who opt to join the new scheme<sup>24</sup>. The two schemes will run in PARALLEL so long as there are persons who qualify for pensions under the 1987 scheme. However, the Secretary of State is given power to merge police pension schemes<sup>25</sup>.

1 The consent of the Minister for the Civil Service was originally required: see the Police Pensions Act 1976 s 1(1). The functions of the Minister for the Civil Service relating to civil service pay, pensions etc were transferred to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670. However, the power of the Treasury to prescribe pension schemes for civil servants and others covered by the Principal Civil Service Pension Scheme under the Superannuation Act 1972 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567 et seq) again became functions of the Minister by the Transfer of Functions (Treasury and Minister for the Civil Service) Order 1995, SI 1995/269, art 3, Schedule para 6. As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427 et seq. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 As to the Police Negotiating Board see PARA 424 post.

3 As to the Secretary of State see PARA 107 note 15 ante.

4 'Pension', in relation to a person, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him, and includes a lump sum or a gratuity so payable and a return of contributions: Police Pensions Act 1976 s 11(5).

5 Membership of a police force or to service or employment in a police force includes a reference to: (1) service as an officer pursuant to an appointment under the Overseas Development and Co-operation Act 1980 s 10 (repealed) or an appointment made in connection with the provision by the Secretary of State of assistance under the International Development Act 2002; (2) temporary service in accordance with arrangements made under the Police Act 1996 s 26(2) (see PARA 172 ante); (3) service in the Police Service of Northern Ireland in respect of which the provisions of the Police Act 1996 s 97 (as amended) (see PARA 428 post) have effect or, as the case may be, of the Police (Scotland) Act 1967 s 38A (as added) have effect; (4) service as an inspector or assistant inspector of constabulary appointed on or after 1 August 1964; and (5) service as an employee of Serious Organised Crime Agency by a person who immediately before he became an employee of that Agency was serving as the Director General of the National Criminal Intelligence Service; (6) service as an employee of the Serious Organised Crime Agency by a person who immediately before he became such an employee was serving as the Director General of the National Crime Squad; (7) service as an employee of the Serious Organised Crime Agency by a person who immediately before he became such an employee was serving as a police member of the National Criminal Intelligence Service appointed under the Police Act 1997 s 9(1)(b) (repealed) by virtue of s 9(2)(a) (repealed); (8) service as an employee of the Serious Organised Crime Agency by a person who immediately before he became such an employee was serving as a police member of the National Crime Squad appointed under the Police Act 1997 s 55(1)(b) (repealed) by virtue of s 55(2)(a) (repealed); (9) service, by a person holding the office of constable, as a member of the staff of the National Policing Improvement Agency; (10) central service in respect of which the provisions of the Police Act 1996 s 97 (as amended) (see PARA 428 post) or (as the case may be) of the Police (Scotland) Act 1967 s 38A (as added) have effect: Police Pensions Act 1976 s 11(1) (amended by the Police and Magistrates' Courts Act 1994 s 44, Sch 5 para 20(2); the Police Act 1996 s 103, Sch 7 para 30(2); the Police (Northern Ireland) Act 2000 s 78(2)(f); the Criminal Justice and Police Act 2001 ss 102, 126(2), Sch 4 para 6(1), (3); the International Development Act 2002 s 19(1), Sch 3 para 6(2); the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 29, 31(1), (2); and the Police and Justice Act 2006 ss 1(3), 52, Sch 1 paras 57, 59(1), (2), Sch 15 Pt 1(A)). References to an inspector or assistant inspector of constabulary, and to service as such, do not have effect in relation to cases in which the person in question was appointed on or after 1 January 1999, and did not serve as a member of a police force at any time before his appointment took effect: Police Pensions Act 1976 s 11(7) (added by the Police and Justice Act 2006 s 15, Sch 14 para 4). As to Her Majesty's Inspectors of Constabulary see PARA 206 ante. As to the Serious Organised Crime Agency see PARA 430 et seq post. As to the office of constable see PARA 101 et seq ante. As to the National Policing Improvement Agency see PARA 223 ante.

'Police force' means any police force within the meaning of the Police Act 1996 (see PARA 102 note 11 ante) and, in respect of any person such as is mentioned in the Police (Overseas Service) Act 1945 s 1(1) (see PARA 427 post), and any person engaged or employed in any service such as is mentioned in heads (1)-(10) supra, any body in or with which that person is serving: Police Pensions Act 1976 s 11(3)(a), (b) (amended by the Police and Magistrates' Courts Act 1994 s 44, Sch 5 para 20(4); the Criminal Justice and Police Act 2001 ss 102, 126(4), Sch 4 para 6(1), (5); and the Police and Justice Act 2006 Sch 1 paras 57, 59(1), (4), Sch 15 Pt 1(A)). The Police Pensions Act 1976 has effect: (a) as if Metropolitan Police Commissioners and assistant metropolitan police commissioners and City of London Police Commissioners were members of those forces respectively; and (b) in relation to any person who on 5 July 1948 was or had been the surgeon of the City of London police force or a clerk or other person employed in or in connection with that force, as if such surgeons, clerks or other persons employed in or in connection with that force were members of that force; and references to membership of a police force are to be construed accordingly: s 11(4). As to the Metropolitan Police Commissioner see PARA 183 ante; and as to assistant metropolitan police commissioners see PARA 186 ante. As to the City of London Police Commissioner see PARA 187 ante.

6 See *ibid* s 1(1) (amended by the Police Negotiating Board Act 1980 s 2(3); and the Police Act 1996 s 103, Sch 7 para 28).

7 Police Pensions Act 1976 s 1(1)(a). Regulations may also make provision for the payment of pensions to persons who cease to be members of a police force: see s 1(2).

8 'Pension rights' includes, in relation to any person, all forms of right to, or eligibility for, the present or future payment of a pension to or in respect of that person: *ibid* s 11(5).

9 *Ibid* s 1(1)(b).

10 *Ibid* s 1(1)(c). As to compulsory retirement see PARAS 240-241 ante.

11 See *ibid* s 1(2), (2A) (s 1(2A) added by the Police and Firemen's Pensions Act 1997 s 1(1)).

12 See the Police Pensions Act 1976 s 1(3)(a), (4).

13 See *ibid* s 1(3)(b).

14 See *ibid* s 1(5).

15 See *ibid* s 3.

16 See *ibid* s 2.

17 See *ibid* s 2(1)(a), (2), (5).

18 See *ibid* s 2(1)(b), (3).

19 See *ibid* s 2(4).

20 *Ie* the scheme created by the Police Pensions Regulations 1987, SI 1987/257 (amended by SI 1987/341; SI 1987/2215; SI 1988/1339; SI 1989/733; SI 1990/805; SI 1991/1517; SI 1992/1343; SI 1992/2349; SI 1994/641; SI 1996/867; SI 1997/1429; SI 1997/2852; SI 1998/577; SI 2000/843; SI 2000/1549; SI 2001/3649; SI 2001/3888; SI 2002/3202; SI 2003/27; SI 2003/535; SI 2003/2716; SI 2004/1491; SI 2004/1760; SI 2004/2354; SI 2005/1439; SI 2006/740; SI 2006/932; and by virtue of the Police (Northern Ireland) Act 2000 s 78) and the Police Pensions (Supplementary Provisions) Regulations 1987, SI 1987/256 (amended by SI 1987/341; SI 2006/932). See also the Police Pensions (War Service) Regulations 1979, SI 1979/1259 (modified by SI 1985/2029; and amended by SI 1987/256; and by virtue of the Police (Northern Ireland) Act 2000 s 78); the Police Pensions (War Service) (Transferees) Regulations 1985, SI 1985/2029 (amended by SI 1987/256; SI 1987/1907; and by virtue of the Police (Northern Ireland) Act 2000 s 78); the Police (Injury Benefit) Regulations 2006, SI 2006/932; the Police Pensions (Purchase of Increased Benefits) Regulations 1987, SI 1987/2215 (amended by SI 1990/805; SI 2002/3202; SI 2004/2354; SI 2005/1439); and the Police Pensions (Additional Voluntary Contributions) Regulations 1991, 1991/1304 (amended by SI 2002/3202; SI 2003/27; SI 2003/535; SI 2003/2717; SI 2006/740).

As to the regulations applying to members of the police force who retired or otherwise ceased to be members before 1 April 1972 see the Police Pensions Regulations 1971, SI 1971/232 (amended by SI 1971/583; SI 1971/1327; SI 1971/1466; SI 1972/1642; SI 1973/429; SI 1973/1773; SI 1974/1533; SI 1974/1796; SI 1975/1718; SI 1976/1707; SI 1977/1705; SI 1978/1578; SI 1979/1287; SI 1980/1616; SI 1987/256); the Police Pensions Regulations 1973, SI 1973/428 (amended by SI 1973/1773; SI 1974/1533; SI 1974/1673; SI 1974/1796; SI 1975/1718; SI 1976/306; SI 1976/1707; SI 1977/1705; SI 1977/2173; SI 1978/375; SI 1978/1348; SI 1978/1578; SI 1979/406; SI 1979/1287; SI 1980/82; SI 1980/272; SI 1980/1616; SI 1982/1151; SI 1983/996; SI 1985/156; SI 1986/1379; SI 1987/158; SI 1987/159; SI 1987/256; and modified by SI 1974/432; SI 1980/82); and the Police Pensions (Transitory Provisions) Regulations 1973, SI 1973/429 (which make transitory provisions in connection

with the replacement of the Police Pensions Regulations 1971, SI 1971/232 (as amended) by the Police Pensions Regulations 1973, SI 1973/428 (as amended)). The Police Pensions Regulations 1971, SI 1971/232 (as amended), and the Police Pensions Regulations 1973, SI 1973/428 (as amended), are revoked to the extent mentioned in the Police Pensions (Supplementary Provisions) Regulations 1987, SI 1987/526 (as amended), and replaced as from 1 April 1987 by the Police Pensions Regulations 1987, SI 1987/257, but in respect of any period between 1 April 1972 and 1 April 1987, the Police Pensions Regulations 1973, SI 1973/428 (as amended) are further amended by SI 1987/256.

21 As to the scheme created by the Police Pensions Regulations 1987, SI 1987/257 (as amended) see PARAS 408-417 post.

22 The 2006 scheme was created by the Police Pension Regulations 2006, SI 2006/3415: see PARA 418 post.

23 See Home Office Circular 044/2006: The Police Pension Scheme-The Police Pensions Regulations 2006 and the new Police Pension Scheme 2006.

24 As to the application of the scheme see PARA 418 post.

25 See PARA 419 post.

## **UPDATE**

### **407 Police pensions regulations**

TEXT AND NOTES--As to provisions relating to the establishment, maintenance and operation, of police pension funds, see the Police Pension Fund Regulations 2007, SI 2007/1932 (amended by SI 2008/1887, SI 2009/2060).

NOTE 20--SI 1987/257 further amended: SI 2007/1932, SI 2008/1887. SI 1987/2215 further amended: SI 2008/1887. SI 2006/932 amended: SI 2007/1932, SI 2008/1887, SI 2009/2060.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/ (vi) Pensions/B. THE POLICE PENSION REGULATIONS 1987/408. Persons subject to police pensions regulations.

## ***B. THE POLICE PENSION REGULATIONS 1987***

### **408. Persons subject to police pensions regulations.**

The Police Pensions Regulations 1987<sup>1</sup> extend to members of police forces<sup>2</sup> which for these purposes include: (1) the City of London Police Commissioner<sup>3</sup>; (2) an overseas policeman<sup>4</sup>; (3) an inspector or assistant inspector of constabulary<sup>5</sup> appointed on or after 1 August 1964; and (4) a central police officer<sup>6</sup>.

The regulations distinguish between auxiliary policemen<sup>7</sup> and regular policemen<sup>8</sup>. Only those provisions relating to awards payable on permanent disablement or death resulting from an injury received in the execution of duty, or on death while serving, apply in the case of auxiliary policemen, who do not pay contributions<sup>9</sup>.

Where a regular policeman undertakes relevant service in the armed forces<sup>10</sup>, he remains subject to the regulations and enjoys certain rights under them<sup>11</sup>.

1 le the Police Pensions Regulations 1987, SI 1987/257 (as amended). As to other relevant regulations see PARA 407 note 20 ante.

2 For the meaning of 'police force', and as to members of police forces, see PARA 407 note 5 ante.

3 As to the City of London Police Commissioner see PARA 187 ante.

4 'Overseas policeman' means: (1) a member of an overseas corps; or (2) an officer to whom the Overseas Development and Co-operation Act 1980 s 10 (repealed) or the Overseas Service Act 1958 applies or applied and whose service as such an officer is or was for the time being service in respect of which the Overseas Development and Co-operation Act 1980 s 11 (repealed) or the Overseas Service Act 1958 s 5 (repealed) has or had effect; and 'overseas service' means service as an overseas policeman: Police Pensions Regulations 1987, SI 1987/257, reg A4(1), Sch A. 'Overseas corps' means a body in which persons such as are mentioned in the Police (Overseas Service) Act 1945 s 1(1) are serving and in relation to which regulations have been made under s 1(2) (see PARA 427 post): see the Police Pensions Regulations 1987, SI 1987/257, Sch A.

5 As to Her Majesty's Inspectors of Constabulary see PARA 206 ante.

6 Police Pensions Regulations 1987, SI 1987/257, Sch A. 'Central police officer' means a member of a police force engaged on central service who enjoyed a right of reversion under the Police Act 1964 s 43(1) (repealed: see now the Police Act 1996 s 97(1) (as amended); and PARA 428 post): Police Pensions Regulations 1987, SI 1987/257, Sch A. 'Central service' means relevant service within the meaning of the Police Act 1996 s 97(1)(b)-(cc) (as amended) (see PARA 428 post) or the Police (Scotland) Act 1967 s 38A(1)(b)-(bb) (as added and amended): see the Police Pensions Regulations 1987, SI 1987/257, Sch A (definition substituted by SI 1998/577).

7 'Auxiliary policeman' means a member of the first class of the police reserve (see PARA 102 note 9 ante), a member of the Police War Reserve or a member of Class A of the former Women's Auxiliary Police Corps: Police Pensions Regulations 1987, SI 1987/257, Sch A.

8 'Regular policeman' means: (1) a member of a home police force who is not an auxiliary policeman; (2) an overseas policeman who enjoys a right of reversion to a home police force (see PARA 428 post); (3) an inspector or assistant inspector of constabulary appointed on or after 1 August 1964; and (4) a central police officer: ibid Sch A. 'Home police force' means any police force within the meaning of the Police Act 1964 or the Police (Scotland) Act 1967: Police Pensions Regulations 1987, SI 1987/257, Sch A.

9 See in particular ibid regs B5, C7, E2-4, F2 (all as amended), reg G2, Sch B Pts V-VIII (as amended), Sch C Pts III, V (both as amended).

10 Ie such service as is mentioned in ibid reg A14.

11 See ibid Pt I (regs I1-I8). As to the power to treat a period of service in the armed forces, or a period of instruction, as service as a member of a police force see the Police Pensions Act 1976 s 5.

## UPDATE

### 408 Persons subject to police pensions regulations

NOTE 6--Definition of 'central service' amended: SI 2008/1887.

NOTE 8--Definition of 'regular policeman' amended: SI 2008/1887.

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### 409. Pension authority.

An award which is payable to or in respect of a person by reason of his having served as a regular policeman<sup>1</sup> is payable by the police authority<sup>2</sup> of the force in which he last served as such<sup>3</sup>. An award which is payable to or in respect of a person by reason of his having been injured while serving as a member of a police force<sup>4</sup> other than a regular policeman are payable by the police authority of the force in which he was serving when he received the injury<sup>5</sup>. All such payments made by or to a police authority are paid out of or into the police fund<sup>6</sup> except

for payments in relation to overseas policemen, inspectors or assistant inspectors of constabulary and central police officers, which are paid out of money provided by Parliament<sup>7</sup>.

1 For the meaning of 'regular policeman' see PARA 408 note 8 ante.

2 'Police authority' means any police authority within the meaning of the Police Act 1996 (see PARA 139 note 1 ante) or the Police (Scotland) Act 1967, except that: (1) in relation to any regulations made under the Police (Overseas Service) Act 1945 and any service such as is mentioned in PARA 407 note 5 head (1) ante, it means the Secretary of State or the Minister of Overseas Development; (2) in relation to any service such as is mentioned in PARA 407 note 5 heads (2)-(4), (10) ante, it means (subject to heads (3)-(5) infra) the Secretary of State; (3) in relation to temporary service with the Independent Police Complaints Commission (see the Police Act 1996 s 97(1)(aa) (as added); and PARA 428 post), it means the Independent Police Complaints Commission; (4) in relation to any such service as is mentioned in PARA 407 note 5 head (5), (6), (7) or (8) ante or any temporary service as a member of the staff of the Serious Organised Crime Agency (see the Police Act 1997 s 97(1)(cf) (as added); and PARA 428 post), it means the Serious Organised Crime Agency; (5) in relation to any service by a person holding the office of constable as a member of the staff of the National Policing Improvement Agency (see PARA 407 note 5 head (9) ante), it means the National Policing Improvement Agency: Police Pensions Act 1976 s 11(2) (amended by the Police and Magistrates' Courts Act 1994 s 44, Sch 5 para 20(3); the Police Act 1997 s 134, Sch 9 para 33(2), Sch 10; the Criminal Justice and Police Act 2001 s 102, Sch 4 para 6(1), (4); the Police Reform Act 2002 s 107(1), Sch 7 paras 7(1), (2); the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 29, 31(1), (3); and the Police and Justice Act 2006 ss 1(3), 52, Sch 1 paras 57, 59(1), (3), Sch 15 Pt 1(A)); Police Pensions Regulations 1987, SI 1987/257, reg A4(1), Sch A. As to the Secretary of State see PARA 107 note 15 ante. As to the Independent Police Complaints Commission see PARA 316 et seq ante. As to the Serious Organised Crime Agency see PARA 430 et seq post. As to the National Policing Improvement Agency see PARA 223 ante.

3 Ibid reg L1(1).

4 As to the persons subject to the pensions regulations see PARA 408 ante.

5 Police Pensions Regulations 1987, SI 1987/257, reg L1(2). Provision is also made as to the payment of awards subject to pension sharing arrangements: see reg L1(3), (4) (both added by SI 2002/3202). As to pension sharing arrangements see PARA 417 post.

6 Police Pensions Regulations 1987, SI 1987/257, reg L2(1) (amended by SI 2000/1549). For the meaning of 'police fund' see PARA 167 note 3 ante. An award and any transfer value payable in respect of the Metropolitan Police Commissioner is met out of money provided by Parliament: see the Police Pensions Regulations 1987, SI 1987/257, reg L2(2). As to the Metropolitan Police Commissioner see PARA 183 ante. As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.

7 See ibid reg L2(4). For the meaning of 'overseas policeman' see PARA 408 note 4 ante; and for the meaning of 'central police officer' see PARA 408 note 6 ante. As to Her Majesty's Inspectors of Constabulary see PARA 206 ante.

## UPDATE

### 409 Pension authority

TEXT AND NOTES 6, 7--SI 1987/257 reg L2 revoked: SI 2007/1932.

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### 410. Pensionable pay, contributions and pensionable service.

Only the pay of a member of a police force<sup>1</sup> is pensionable<sup>2</sup>, and not his total emoluments including allowances, and pension contributions are calculated accordingly<sup>3</sup>. A member is entitled to reckon as pensionable service all his service in his force since he last joined or



rejoined it, together with certain previous police service, in particular in a police force (including a Scottish force) from which he has transferred<sup>4</sup>.

Where a regular policeman<sup>5</sup> has previously been in some other pensionable occupation and, under interchange arrangements, a transfer value is paid to his police authority, he is entitled to reckon service by virtue of the transfer value<sup>6</sup>.

1 As to persons subject to the pensions regulations see PARA 408 ante.

2 See the Police Pensions Regulations 1987, SI 1987/257, reg G1(1) (amended by SI 1989/733; SI 1992/1343; SI 1992/2349). During a period of part-time service in a rank below that of superintendent pensionable pay means so much of his pay as is attributable to his determined hours: Police Pensions Regulations 1987, SI 1987/257, reg G1(1) (as so amended). As to ranks see PARA 230 ante. As to hours of duty see PARA 396 ante.

3 See *ibid* reg G2 (amended by SI 1990/805; SI 2004/2354). As to pay, allowances and expenses see PARAS 397-399 ante.

4 See the Police Pensions Regulations 1987, SI 1987/257, Pt F (regs F1-F11) (amended by SI 1988/1339; SI 1990/805; SI 1992/1343; SI 1996/867; SI 1997/2852; SI 1998/577; SI 2000/843; SI 2001/3469; SI 2002/3202; SI 2003/27; SI 2003/2716; SI 2004/1491; SI 2004/1760; and by virtue of the Police (Northern Ireland) Act 2000 s 78).

5 For the meaning of 'regular policeman' see PARA 408 note 8 ante.

6 See the Police Pensions Regulations 1987, SI 1987/257, regs F6, F7, Sch F (reg F6 amended by SI 1990/805; SI 2004/1760; Police Pensions Regulations 1987, SI 1987/257, Sch F amended by SI 1990/805; SI 1991/1517; SI 2002/3202; SI 2004/1760; and by virtue of the Police (Northern Ireland) Act 2000 s 78). For the meaning of 'police authority' see PARA 409 note 2 ante.

## UPDATE

### 410 Pensionable pay, contributions and pensionable service

NOTE 2--SI 1987/257 reg G1(1) further amended: SI 2008/1887, SI 2009/2060.

NOTE 6--SI 1987/257 Sch F further amended: SI 2008/1887.

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### 411. Information in connection with police pensions.

A police authority<sup>1</sup> may, in prescribed circumstances<sup>2</sup>, provide information in connection with specified questions to a prescribed person<sup>3</sup>, and require that person to pay a reasonable fee in respect of any administrative expenses incurred in providing that information<sup>4</sup>. The specified questions are whether an individual who has opted or transferred out<sup>5</sup> has suffered loss as a result of a contravention which is actionable<sup>6</sup> and, if so, what payment would need to be made in respect of that individual to the police authority concerned to restore the position to what it would have been if that individual had not opted or transferred out<sup>7</sup>. Where an individual who has opted or transferred out becomes entitled to make contributions to a police authority in respect of police pension rights, or a payment is made to a police authority in respect of such an individual for the purpose of restoring the position to what it would have been if he had not opted or transferred out, the police authority may require a prescribed person to pay a

reasonable fee in respect of any administrative expenses incurred in connection with that entitlement or payment<sup>8</sup>.

The police authority also has a duty to disclose certain information about the police pensions scheme to members of the scheme<sup>9</sup>.

1 For the meaning of 'police authority' see PARA 409 note 2 ante.

2 The prescribed circumstances are where a written request for, or a written consent to the provision of, information has been given by, or on behalf of, the individual or the personal representatives of the individual to whom the information relates: see the Police Pensions (Provision of Information) Regulations 1997, SI 1997/1912, reg 2. For the meaning of 'written' see PARA 115 note 9 ante.

3 As to the prescribed persons see *ibid* reg 3(2) (amended by SI 2001/3649).

4 Police Pensions Act 1976 s 8A(1) (s 8A added by the Police and Firemen's Pensions Act 1997 s 2).

5 An individual is taken to have opted or transferred out if, for any period during which he is a member of a police force, he does not make contributions in respect of police pension rights but instead makes contributions to a personal pension scheme, or a transfer value is paid in respect of the individual by a police authority to a personal pension scheme: Police Pensions Act 1976 s 8A(4) (as added: see note 4 *supra*). 'Police pension rights' means pension rights under regulations made under s 1 (see PARA 407 ante): s 8A(5) (as so added). For the meaning of 'pension rights' see PARA 407 note 8 ante. For the meaning of 'police force' see PARA 407 note 5 ante. 'Personal pension scheme' has the meaning given by the Pensions Schemes Act 1993 s 1 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 710): Police Pensions Act 1976 s 8A(5) (as so added).

6 It is actionable under the Financial Services Act 1986 s 62 or the Financial Services and Markets Act 2000 s 150 (actions for damages in respect of contravention of rules etc made under the Act: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 33): see the Police Pensions Act 1976 s 8A(2)(a) (as added (see note 4 *supra*); and amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 109).

7 Police Pensions Act 1976 s 8A(2)(b) (as added: see note 4 *supra*).

8 *Ibid* s 8A(3) (as added: see note 4 *supra*).

9 See the Occupational Pension Schemes (Managers) Regulations 1986, SI 1986/1718 (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 557.

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#### **412. Awards.**

Awards are granted on retirement<sup>1</sup> or on death, whether in service or after retirement<sup>2</sup>. In certain circumstances a regular policeman may purchase increased pension benefits<sup>3</sup>.

To qualify for a policeman's ordinary pension<sup>4</sup> a regular policeman must have at least 25 years' pensionable service<sup>5</sup>, but where he is required to retire on account of age (and in certain other circumstances) with less pensionable service a short service award is granted<sup>6</sup>. Ill-health awards<sup>7</sup> are made to regular policemen who retire on grounds of permanent disablement<sup>8</sup>, supplemented by injury awards where the disablement results from an injury<sup>9</sup> received without default, in the execution of duty<sup>10</sup>. Unless a transfer value is payable on a regular policeman ceasing to serve as such in circumstances not entitling him to any other award, he is entitled to either a deferred pension<sup>11</sup> or a return of contributions<sup>12</sup>. In certain circumstances a portion of a pension may be commuted for a lump sum or allocated in favour of the pensioner's wife or other dependant<sup>13</sup>.

The widow of a regular policeman with at least three years' pensionable service is entitled to a widow's ordinary pension<sup>14</sup> if he dies in service<sup>15</sup>, dies in consequence of disablement which occasioned his retirement, or dies while in receipt of an ordinary short-service, ill-health or injury pension<sup>16</sup>. The qualifications for child's ordinary allowances are slightly less stringent; in particular, the requirement of three years' pensionable service does not apply<sup>17</sup>. Where the death of a member of a police force is the result of an injury received without default in the execution of duty, his adult survivor and his children are entitled to special awards<sup>18</sup>; and in certain circumstances, in particular where the policeman died as the result of an attack or while effecting an arrest or saving life, his adult survivor's special pension is payable at an enhanced rate as an adult survivor's augmented award<sup>19</sup> or, if he does not leave an adult survivor, his children are entitled to a special gratuity in addition to special allowances<sup>20</sup>. Accrued widow's and children's awards are also payable where a regular policeman who is entitled to a deferred pension dies, whether or not that pension has come into payment<sup>21</sup>. In prescribed cases, a special pension may be paid on the death of a member of a police force to the deceased's dependent relatives<sup>22</sup> and a death gratuity is payable to his adult survivor, child or dependent relative<sup>23</sup>.

Provision is made as to the sharing of pension rights in prescribed circumstances<sup>24</sup>.

1 As to awards on retirement or disablement see the Police Pensions Regulations 1987, SI 1987/257, reg L3 (amended by SI 1990/805; SI 2006/740; SI 2006/932). As to what amounts to retirement see the Police Pensions Regulations 1987, SI 1987/257, reg A17 (amended by SI 1998/577; SI 2003/2716; and by virtue of the Police (Northern Ireland) Act 2000 s 78). A regular policeman who is dismissed otherwise than for a cause for which a pension could be forfeited under the Police Pensions Regulations 1987, SI 1987/257, reg K5 (as amended) (see PARA 415 post) and has at least 25 years' pensionable service is treated as if he had retired: see reg B1(6). For the meaning of 'regular policeman' see PARA 408 note 8 ante. In certain circumstances a displaced chief constable is treated as having retired: see reg B1(3) (amended by SI 1998/577; SI 2003/27).

2 As to awards on death see the Police Pensions Regulations 1987, SI 1987/257, Pt C (regs C1-C10) (amended by SI 1990/805; SI 1992/2349; SI 2006/740; SI 2006/932); the Police Pensions Regulations 1987, SI 1987/257, Sch C (amended by SI 1990/805; SI 1992/2349; SI 1994/641; SI 2006/740; SI 2006/932); the Police Pensions Regulations 1987, SI 1987/257, Pt D (regs D1-D6) (amended by SI 1990/805; SI 2002/3202; SI 2006/740; SI 2006/932); the Police Pensions Regulations 1987, SI 1987/257, Sch D (amended by SI 1990/805; SI 2006/932); the Police Pensions Regulations 1987, SI 1987/257, Pt E (regs E1-E11) (amended by SI 1992/2349; SI 1994/641; SI 2002/3202; SI 2006/740; SI 2006/932); and the Police Pensions Regulations 1987, SI 1987/257, Sch E (amended by SI 2006/932). Every assignment of or charge on a pension granted under the regulations made under the Police Pensions Act 1976 s 1 (as amended) (see PARA 407 ante), and every agreement to assign or charge such a pension is, except so far as it is made for the benefit of a dependent of the pensioner, void, and on the bankruptcy of the pensioner such a pension does not pass to any trustee or other person acting on behalf of the creditors: s 9. As to bankruptcy and arrangements and compositions with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

3 See the Police Pensions (Purchase of Increased Benefits) Regulations 1987, SI 1987/2215 (amended by SI 1990/805; SI 2002/3202; SI 2004/2354; SI 2005/1439).

4 As to such pensions see the Police Pensions Regulations 1987, SI 1987/257, reg B1 (amended by SI 1998/577; SI 2000/1549; SI 2001/3888; SI 2003/27; SI 2004/2354); and the Police Pensions Regulations 1987, SI 1987/257, Sch B Pts I, VII, VIII (Sch B Pt I substituted by SI 2005/1439; Police Pensions Regulations 1987, SI 1987/257, Sch B Pts VII, VIII amended by virtue of the Police (Northern Ireland) Act 2000 s 78; Police Pensions Regulations 1987, SI 1987/257, Sch B Pt VIII further amended by SI 1992/3249).

5 See the Police Pensions Regulations 1987, SI 1987/257, reg B1(1). As to pensionable service see PARA 410 ante.

6 As to short service awards see *ibid* reg B2 (amended by SI 1990/805); and the Police Pensions Regulations 1987, SI 1987/257, Sch B Pts II, VII, VIII (Sch B Pt II substituted by SI 2005/1439; Police Pensions Regulations 1987, SI 1987/257, Sch B Pts VII, VIII as amended (see note 4 supra)).

7 As to ill-health awards see the Police Pensions Regulations 1987, SI 1987/257, reg B3 (amended by SI 1990/805; SI 2004/2354); and the Police Pensions Regulations 1987, SI 1987/257, Sch B Pts III, IV, VII, VIII (Sch B Pt III substituted by SI 2005/1439; Police Pensions Regulations 1987, SI 1987/257, Sch B Pts VII, VIII as amended (see note 4 supra)). An ill-health award is treated as earnings for the purposes of the Attachment of Earnings Act 1971: *Miles v Miles* [1979] 1 All ER 865, [1979] 1 WLR 371, CA. In an action for damages an ill-health award

is not deductible in assessing damages for loss of earnings, but is taken into account in respect of loss of retirement pension: *Parry v Cleaver* [1970] AC 1, [1969] 1 All ER 555, HL.

8 See the Police Pensions Regulations 1987, SI 1987/257, reg B3(1), (2) (reg B3(1) as amended: see note 7 supra). As to what amounts to permanent disablement see regs A12(1), (1A) (reg A12(1A) added by SI 2003/535). 'Disablement' means inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force except that, in relation to a child or the widower of a member of a police force, it means inability, occasioned as aforesaid, to earn a living: Police Pensions Regulations 1987, SI 1987/257, reg A12(2) (amended by SI 2003/535; SI 2006/932). There is conflicting authority as to whether the officer must be unable to work in police forces generally (*R (on the application of Sussex Police Authority) v Beck* [2003] EWHC 1361 (Admin)), or whether it suffices that the officer is unable to continue working for his current force (*R (on the application of Corkindale) v Police Medical Appeal Board* [2006] EWHC 3362 (Admin), [2006] All ER (D) 334 (Dec)). For these purposes, an officer who is able to perform some but not all duties is not able to perform 'the ordinary duties of a member of the force' and falls within the definition of 'disablement': *R v Sussex Police Authority, ex p Stewart* [2000] ICR 1122, (2000) Times, 13 April, [2000] All ER (D) 461, CA. As to the calculation of the amount of benefit payable on disablement see the Police (Injury Benefit) Regulations 2006, SI 2006/932 (amended by SI 2006/3415). See also *R v Milling (Medical Referee), ex p West Yorkshire Police Authority* [1997] 8 Med LR 392, (1996) Times, 24 December.

9 As to what constitutes an injury see *R v Kellam, ex p South Wales Police Authority* [2000] ICR 632, (1999) Times, 24 August, [1999] All ER (D) 721; *R (on the application of Stunt) v Mallett* [2001] EWCA Civ 265, [2001] ICR 989, [2001] All ER (D) 292 (Feb); *R (on the application of Merseyside Police Authority) v Gidlow* [2004] EWHC 2807 (Admin), [2004] All ER (D) 105 (Dec).

10 See the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 11, Sch 3 (amended by SI 2006/3415).

11 As to deferred pensions see the Police Pensions Regulations 1987, SI 1987/257, reg B5 (amended by SI 1990/805; SI 1992/2349; SI 2004/2354; SI 2006/932).

12 See the Police Pensions Regulations 1987, SI 1987/257, regs B7, B8, B10 (reg B7 amended by SI 2006/932; Police Pensions Regulations 1987, SI 1987/257, reg B8 amended by SI 1994/641; SI 2002/3202; SI 2006/932).

13 See the Police Pensions Regulations 1987, SI 1987/257, regs B9, B10 (reg B9 amended by SI 2006/740).

14 As to widow's ordinary pensions see the Police Pensions Regulations 1987, SI 1987/257, reg C1, Sch C Pt I (reg C1 amended by SI 1990/805; SI 2006/932; Police Pensions Regulations 1987, SI 1987/257, Sch C Pt I amended by SI 2006/740; SI 2006/932).

15 This does not apply if the policeman had or has made an election not to pay pension contributions which has or had effect at the time of his death: see the Police Pensions Regulations 1987, SI 1987/257, reg C1 proviso (amended by SI 1990/805). As to such an election see the Police Pensions Regulations 1987, SI 1987/257, reg G4(1) (added by SI 1990/805).

16 Police Pensions Regulations 1987, SI 1987/257, reg C1(1) (as amended: see note 14 supra).

17 See *ibid* reg D1 (amended by SI 1990/805; SI 2006/932).

18 See the Police (Injury Benefit) Regulations 2006, SI 2006/932, regs 13, 15, 17, 19 (reg 13 amended by SI 2006/3415). 'Adult survivor' means surviving spouse or surviving civil partner: see the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 13(1).

19 See *ibid* regs 14, 15.

20 See *ibid* regs 18, 19.

21 See the Police Pensions Regulations 1987, SI 1987/257, reg C4, Sch C Pt III (amended by SI 1990/805; SI 1992/2349; SI 1994/641; SI 2006/740) (widow's accrued pension); and the Police Pensions Regulations 1987, SI 1987/257, reg D4, Sch D Pt III (amended by SI 1990/805) (child's accrued allowance).

22 See the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 20, Sch 5.

23 See *ibid* reg 21 (amended by SI 2006/3415).

24 See the Police Pensions Regulations 1987, SI 1987/257, Pt M (regs M1-M19) (added by SI 2002/3202; and amended by SI 2003/535; SI 2006/740); and PARA 417 post.

## UPDATE

## 412 Awards

TEXT AND NOTES 1-6--SI 1987/257 reg B1 further amended: SI 2008/1887, SI 2009/2060. SI 1987/257 reg B2 further amended: SI 2008/1887. SI 1987/257 reg B2A added by SI 2008/1887, and amended by SI 2009/2060.

NOTE 1--SI 1987/257 reg A17 further amended: SI 2008/1887, SI 2009/2060.

NOTE 3--SI 1987/2215 further amended: SI 2008/1887.

NOTE 7--SI 1987/257 Sch B Pt III amended: SI 2008/1887.

NOTE 8--SI 2006/932 further amended: SI 2008/1887, SI 2009/2060. SI 1987/257 reg A12(2) further amended, reg A12(2A) added: SI 2009/2060. *Corkindale*, cited, reported at [2009] ICR 63, applied in *R (on the application of Ashton) v Police Medical Appeal Board* [2008] EWHC 183 (Admin), [2008] All ER (D) 02 (Oct), not following *Beck*, cited.

NOTE 10--A police officer may act in execution of his duty even though not on rostered duty where what he is doing is an integral part of his functions: *R (on the application of Merseyside Police Authority) v Police Medical Appeal Board* [2009] EWHC 88 (Admin), (2009) 107 BMLR 22.

NOTE 12--SI 1987/257 reg B7 further amended: SI 2008/1887. See *R (on the application of the Police Federation of England and Wales) v Secretary of State for the Home Department* [2009] EWHC 488 (Admin), [2009] All ER (D) 165 (Mar).

NOTE 24--SI 1987/257 reg M19(1) further amended: SI 2007/1932.

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### 413. Medical questions and appeals.

The question whether a person is entitled to any and if so what award<sup>1</sup> is to be determined in the first instance by the police authority<sup>2</sup>. Where the authority is considering certain medical questions<sup>3</sup> it must refer them to a duly qualified medical practitioner or a board of such practitioners<sup>4</sup> and, if the person concerned is dissatisfied with the decision, he may appeal to a board of medical referees appointed in accordance with arrangements approved by the Secretary of State<sup>5</sup>. The decision of the board of medical referees is, subject to the provisions relating to reference for a further medical opinion<sup>6</sup>, final<sup>7</sup>.

A person claiming as of right an award, or a larger award than that made, may appeal to the Crown Court<sup>8</sup> or, where the award is to or in respect of an overseas policeman<sup>9</sup>, an inspector or assistant inspector of constabulary<sup>10</sup> or a central police officer<sup>11</sup>, to a specially constituted tribunal<sup>12</sup>. A court or tribunal hearing an appeal may, if it considers that the evidence before the medical authority who has given the final decision<sup>13</sup> was inaccurate or inadequate, refer the decision of that authority to him or it, for reconsideration in the light of such facts as the court or the tribunal may direct<sup>14</sup>, and the medical authority must accordingly reconsider the decision and, if necessary, issue a fresh report which, subject to any further reconsideration<sup>15</sup>, is final<sup>16</sup>. The police authority and the claimant may, by agreement, refer any final decision of a medical authority for reconsideration by him or it<sup>17</sup>.

1 As to pension awards see PARA 412 ante.

2 Police Pensions Regulations 1987, SI 1987/257, reg H1. For the meaning of 'police authority' see PARA 409 note 2 ante. Similar provision is made with regard to awards in respect of injury: see the Police (Injury Benefit) Regulations 2006, SI 2006/932, regs 30-36 (reg 30 amended by SI 2006/3415).

3 Ie when it is considering whether a person is disabled and whether the disablement is likely to be permanent; and when considering the reduction under the Police Pensions Regulations 1987, SI 1987/257, reg K3 of a pension for default (see PARA 414 post), whether the person has brought about or substantially contributed to the disablement by his own default: see reg H1(2), (3) (reg H1(2) amended by SI 2006/932).

4 See the Police Pensions Regulations 1987, SI 1987/257, reg H1(2), (3), (4) (reg H1(4) substituted, and reg H1(5), (6) added, by SI 2003/535). The decision of the selected medical practitioner on the question or questions referred to him must be expressed in the form of a report and is, subject to the Police Pensions Regulations 1987, SI 1987/257, regs H2, H3 (both as amended) (see the text to notes 5-7, 13-17 infra), final: reg H1(5) (as so added). A copy of any such report must be supplied to the person who is the subject of that report: reg H1(6) (as so added). If a question is referred to a medical authority and the person concerned wilfully or negligently fails to submit to medical examination or interview, the authority may make its determination on such evidence and medical advice as it thinks necessary or, if the question arises on an appeal to a board of medical referees, the appeal is deemed to be withdrawn: see reg H4 (amended by SI 2004/1491).

5 See the Police Pensions Regulations 1987, SI 1987/257, reg H2(1), (2) (renumbered and amended by SI 2004/1491). As to fees and costs see the Police Pensions Regulations 1987, SI 1987/257, Sch H paras 7, 8 (Sch H substituted by SI 2004/1491; Police Pensions Regulations 1987, SI 1987/257, Sch H para 7 amended by SI 2004/1760). As to the Secretary of State see PARA 107 note 15 ante. On an appeal to a board of medical referees, the relevant date for determination of the degree of disablement is the date of the board's decision: see *R (on the application of McGinley) v Schilling*, *R (on the application of Metropolitan Police Authority) v Beck*, sub nom *R (on the application of Metropolitan Police Authority) v Medical Referee*, *R (on the application of McGinley) v Medical Referee* [2005] EWCA Civ 567, [2005] ICR 1282, (2005) Times, 25 May, [2005] All ER (D) 435 (Apr).

6 Ie the provisions of the Police Pensions Regulations 1987, SI 1987/257, reg H3 (as amended): see the text to notes 13-17 infra.

7 Ibid reg H2(3) (amended by SI 2003/535; SI 2004/1491). If the board disagrees with any part of the report of the selected medical practitioner, its decision must be expressed in the form of a report of its decision on any of the questions referred to the selected medical practitioner on which it disagrees with the latter's decision: Police Pensions Regulations 1987, SI 1987/257, reg H2(3) (as so amended). A provision that a decision is final does not exclude an application for a judicial review: see *R v Medical Appeal Tribunal, ex p Gilmore* [1957] 1 QB 574, sub nom *Re Gilmore's Application* [1957] 1 All ER 796, CA; and JUDICIAL REVIEW vol 61 (2100) PARA 655. The decision of the medical practitioner and, it would seem to follow, of a board of medical referees, is one of a judicial character, and accordingly the principles of natural justice apply and the ordinary doctor-patient relationship does not exist: *R v Kent Police Authority, ex p Godden* [1971] 2 QB 662, sub nom *Re Godden* [1971] 3 All ER 20, CA. As to the principles of natural justice see JUDICIAL REVIEW vol 61 (2100) PARAS 629-647.

8 See the Police Pensions Regulations 1987, SI 1987/257, reg H5(1) (amended by SI 2003/535). No appeal lies under the Police Pensions Regulations 1987, SI 1987/257, reg H5 (as amended) or reg H6 (as amended) (see the text to notes 9-12 infra) against anything done by a police authority in the exercise of a power conferred by the regulations which is expressly declared to be discretionary: see reg H7(1). As to the Crown Court see COURTS vol 10 (Reissue) PARA 621 et seq.

9 For the meaning of 'overseas policeman' see PARA 408 note 4 ante.

10 As to Her Majesty's Inspectors of Constabulary see PARA 206 ante.

11 For the meaning of 'central police officer' see PARA 408 note 6 ante.

12 See the Police Pensions Regulations 1987, SI 1987/257, reg H6(1), (3). See also reg H7(1); and note 8 supra. The tribunal is appointed by the Secretary of State and consists of three persons, including a barrister or solicitor of not less than seven years' standing and a retired police officer of the rank of superintendent or higher: see reg H6(3). Notice of appeal must be given to the Secretary of State: see reg H6(2) (amended by SI 2003/535). The tribunal fixes and gives notice of the hearing (see the Police Pensions Regulations 1987, SI 1987/257, reg H6(4)), at which either party may be represented by a barrister or solicitor or some other appropriate person, and may adduce evidence and cross-examine witnesses (see reg H6(5)). Appeal lies from the tribunal on a point of law to the High Court: see reg H6(9).

13 A 'medical authority who has given a final decision' means the selected medical practitioner, if the time for appeal from his decision has expired without an appeal to a board of medical referees being made, or if,

following a notice of appeal to the police authority, the police authority has not yet notified the Secretary of State of the appeal, and the board of medical referees, if there has been such an appeal: *ibid* reg H3(4) (amended by SI 2003/535; SI 2004/1491).

14 If a medical authority is unable or unwilling to act an alternative may be appointed: see the Police Pensions Regulations 1987, SI 1987/257, reg H3(3) (amended by SI 2003/535).

15 *Ie* under the Police Pensions Regulations 1987, SI 1987/257, reg H3 (as amended).

16 *Ibid* reg H3(1) (amended by SI 2004/1491). Subject to the Police Pensions Regulations 1987, SI 1987/257, reg H3(1) (as amended), in any proceedings under reg H5 (as amended) or reg H6 (as amended) (see the text to notes 9-12 *supra*) the court or tribunal is bound by any final decision of a medical authority: reg H7(2). See *Phillips v Strathclyde Joint Police Board* 2004 SLT 723, IH; *Ead v Home Secretary* [1954] 1 All ER 386, [1954] 1 WLR 386, DC.

17 See the Police Pensions Regulations 1987, SI 1987/257, reg H3(2) (substituted by SI 2004/1491). See also note 14 *supra*.

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#### **414. Cancellation, revision and withdrawal of awards.**

An ill-health or injury pension may in certain circumstances be cancelled if the pensioner ceases to be disabled<sup>1</sup> and an injury pension may be reassessed if there is a change in the degree of his disablement<sup>2</sup>.

Where a member of a police force<sup>3</sup> has brought about his disablement or substantially contributed to it by his own default, the police authority<sup>4</sup>, subject to certain limitations, may reduce his ill-health or injury pension by up to one-half<sup>5</sup>. Further, it is a criminal offence for any person to obtain, or attempt to obtain, a pension by injuring himself or otherwise producing disease or infirmity<sup>6</sup>.

If a pensioner becomes a regular policeman<sup>7</sup> in any police force, the police authority has a discretion to withdraw his pension in whole or in part for so long as he remains such a policeman<sup>8</sup>, unless the pension is payable by virtue of an allocation<sup>9</sup>.

1 See the Police Pensions Regulations 1987, SI 1987/257, reg K1 (amended by SI 1990/805; SI 2006/932); and the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 37(2)-(4) (amended by SI 2006/3415). As to pension awards see PARA 412 *ante*.

2 See the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 37(1).

3 For the meaning of 'police force' see PARA 407 note 5 *ante*.

4 For the meaning of 'police authority' see PARA 409 note 2 *ante*.

5 See the Police Pensions Regulations 1987, SI 1987/257, reg K3 (amended by SI 2006/932); and the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 38. As to the reference of this question to a medical authority see PARA 413 *ante*.

6 See the Police Pensions Act 1976 s 10. The offence is committed irrespective of whether the pension in question is for the accused or another person: see s 10. It is punishable on conviction on indictment by imprisonment for a term not exceeding two years (see s 10(a)), or on summary conviction by imprisonment for a term not exceeding three months or a fine not exceeding the prescribed sum (s 10(b) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2))). As to the prescribed sum see PARA 127 note 6 *ante*.

7 For the meaning of 'regular policeman' see PARA 408 note 8 *ante*.

8 See the Police Pensions Regulations 1987, SI 1987/257, reg K4(1) (substituted by SI 2004/1491); and the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 39(1).

9 See the Police Pensions Regulations 1987, SI 1987/257, reg K4(2); and the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 39(2) (amended by SI 2006/3415). As to allocations see the Police Pensions Regulations 1987, SI 1987/257, reg B9 (amended by SI 2006/740).

## UPDATE

### 414 Cancellation, revision and withdrawal of awards

NOTE 1--SI 1987/257 reg K1 further amended: SI 2008/1887, SI 2009/2060.

NOTE 2--See *R (on the application of Laws) v Police Medical Appeal Board* [2009] EWHC 3135 (Admin), [2009] All ER (D) 38 (Dec) (pension could only be revised if practitioner on referral, or board on appeal, concluded that degree of disablement had substantially altered since last review); and *R (on the application of Northumbria Police Authority) v Industrial and Organisational Health* [2010] EWHC 914 (Admin), [2010] All ER (D) 02 (May).

NOTE 5--SI 1987/257 reg K3 further amended: SI 2008/1887.

NOTES 8, 9--SI 1987/257 reg K4(1), (2) amended: SI 2009/2060. SI 2006/932 reg 39(1) amended, reg 39(3) added: SI 2009/2060.

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### 415. Forfeiture of awards.

In specified circumstances, the police authority<sup>1</sup> responsible for the payment of a pension may determine that it be forfeited in whole or in part and either permanently or temporarily<sup>2</sup>. The power of forfeiture arises in the case of any pension, whether payable to or in respect of a member of a police force<sup>3</sup>, if the pensioner is convicted of treason<sup>4</sup>, or if he is convicted of one or more offences under the Official Secrets Acts 1911 to 1989 and sentenced on the same occasion to imprisonment aggregating at least ten years<sup>5</sup>. However, where the pension is a widow's pension the power arises only if she committed the offence in question after her husband's death<sup>6</sup>. The power of forfeiture also arises, in the case of a member's own pension, if he is convicted of an offence committed in connection with his service in a police force<sup>7</sup> which is certified by the Secretary of State<sup>8</sup> either to have been gravely injurious to the interests of the state or to be liable to lead to serious loss of confidence in the public service<sup>9</sup>.

A person aggrieved by the forfeiture of his pension has the same right of appeal to the Crown Court or, in certain cases, a tribunal as he would have where a police authority refuses to admit a claim as of right to an award<sup>10</sup>.

1 For the meaning of 'police authority' see PARA 409 note 2 ante.

2 See the Police Pensions Regulations 1987, SI 1987/257, reg K5(1), (2) (reg K5(1) amended by SI 2002/3202; SI 2006/932); and the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 40(1), (2). In the case of a pension, other than an injury pension, the police authority in determining whether a forfeiture should be permanent or temporary and affect a pension in whole or in part, may make different determinations in respect of the secured and unsecured portions of the pension; but the secured portion of a pension (see the Police Pensions Regulations 1987, SI 1987/257, reg A5(4)), other than an injury pension, may only be forfeited temporarily for a period before the pensioner attains pensionable age, or for which he is imprisoned or



otherwise detained in legal custody: reg K5(5). To the extent to which a pension is withdrawn or forfeited under the regulations, the police authority is discharged from all actual or contingent liability in respect of it: reg K5(6); Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 40(5).

3 See the Police Pensions Regulations 1987, SI 1987/257, reg K5(1) (as amended: see note 2 *supra*); and the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 40(1). For the meaning of 'police force' see PARA 407 note 5 *ante*.

4 See the Police Pensions Regulations 1987, SI 1987/257, reg K5(3)(a); and the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 40(3)(a). As to offences constituting treason see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 363.

5 See the Police Pensions Regulations 1987, SI 1987/257, reg K5(3)(b); and the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 40(3)(b). As to offences under the Official Secrets Acts 1911 to 1989 see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 478 *et seq*.

6 See the Police Pensions Regulations 1987, SI 1987/257, reg K5(2). In the case of an adult survivor's injury pension, the power arises only if the offence was committed after the death of the pensioner's spouse or, as the case may be, civil partner: see Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 40(2).

7 As to the meaning of 'in connection with' see *Whitchelo v Secretary of State for the Home Department* (11 March 1997) Lexis, CA (where it was held that a police officer did not have to be a serving officer when the offences were committed).

8 As to the Secretary of State see PARA 107 note 15 *ante*.

9 Police Pensions Regulations 1987, SI 1987/257, reg K5(4); Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 40(4).

10 See the Police Pensions Regulations 1987, SI 1987/257, regs H5, H6 (both amended by SI 2003/535); the Police (Injury Benefit) Regulations 2006, SI 2006/932, regs 34-36; and PARA 413 *ante*. The common law rule of forfeiture (see the Forfeiture Act 1982 s 1(1); and STATUTES vol 44(1) (Reissue) PARA 1453), which operates to prevent a person who has unlawfully killed another from acquiring a benefit as a consequence of that killing, is not precluded from applying by the provisions of the Police Pensions Act 1976 and the regulations made thereunder, and thus a wife convicted of the manslaughter of her husband, a police pensioner, was not entitled to widow's pension under those regulations: *Glover v Staffordshire Police Authority* [2006] EWHC 2414 (Admin), [2006] All ER (D) 77 (Oct).

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#### **416. Pensions increases.**

Pensions payable to members of police forces themselves, and pensions payable by reason of the allocation of a part of such pensions<sup>1</sup>, may qualify for increase in pursuance of the general statutory provisions governing the increase of public service pensions<sup>2</sup>. Widows' pensions and children's allowances receive corresponding increases by reference to those provisions<sup>3</sup>.

<sup>1</sup> See PARA 412 *ante*.

<sup>2</sup> See the Pensions (Increase) Act 1971 s 5, Sch 2 (both as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 951); the Pensions (Increase) Act 1974; the Social Security Pensions Act 1975 s 59 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 861); and see the Increase of Pensions (Police and Fire Services) Regulations 1971, SI 1971/1330 (amended by SI 1973/432; SI 1973/965); the Pensions Increase (Modification) (Police and Fire Services) Regulations 1974, SI 1974/1531; the Pensions Increase (Police and Fire Services) Regulations 1974, SI 1974/1532; and the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 29.

<sup>3</sup> See the Police Pensions Regulations 1987, SI 1987/257, regs E9, E10; and the Police (Injury Benefit) Regulations 2006, SI 2006/932, reg 29.

**UPDATE****416 Pensions increases**

NOTE 3--SI 1987/257 reg E10 amended: SI 2008/1887.

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**417. Pension credit members.**

A pension credit member<sup>1</sup> is entitled to a pension for life which becomes payable when he attains normal benefit age<sup>2</sup> or, if it is later, when the pension sharing order<sup>3</sup> under which he is entitled to the pension credit<sup>4</sup> takes effect<sup>5</sup>. A pension credit member may opt to commute for a lump sum<sup>6</sup> a portion of the pension, not exceeding one-quarter, to which he is entitled<sup>7</sup> when he attains normal benefit age or, if it is later, when the pension sharing order under which he is entitled to the pension credit takes effect<sup>8</sup>. The relevant police authority may commute the pension to which a pension credit member is entitled<sup>9</sup> for a lump sum<sup>10</sup>. If a pension credit member dies before any benefits deriving from the member's pension credit have become payable to him, a lump sum death grant is to be paid to the member's spouse or personal representatives<sup>11</sup>. The provisions concerning appeals by a member of a home police force<sup>12</sup>, appeals by overseas policeman<sup>13</sup>, limitations on appeals<sup>14</sup>, and funds out of which and into which payments are to be made<sup>15</sup> apply to pension credit members and awards payable to or in respect of them<sup>16</sup>.

1 'Pension credit member' is to be construed in accordance with the Pensions Act 1995 s 124(1) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 843): Police Pensions Regulations 1987, SI 1987/257, Sch A (definition added by SI 2002/3202).

2 'Normal benefit age' means the age of 60: Police Pensions Regulations 1987, SI 1987/257, Sch A (definition added by SI 2002/3202).

3 'Pension sharing order' means an order or provision mentioned in the Welfare Reform and Pensions Act 1999 s 28(1) (see SOCIAL SECURITY AND PENSIONS): Police Pensions Regulations 1987, SI 1987/257, Sch A (definition added by SI 2002/3202).

4 'Pension credit' means a credit under the Welfare Reform and Pensions Act 1999 s 29(1)(b) (see SOCIAL SECURITY AND PENSIONS): Police Pensions Regulations 1987, SI 1987/257, Sch A (definition added by SI 2002/3202).

5 Police Pensions Regulations 1987, SI 1987/257, reg M1(1) (regs M1-M5 added by SI 2002/3202). As to the calculation of the amount of the pension see the Police Pensions Regulations 1987, SI 1987/257, reg M1(2) (as so added).

6 As to the lump sum see *ibid* reg M2(2)-(4) (reg M2 as added (see note 5 *supra*); reg M2(4) amended by SI 2003/535).

7 *Ie* under the Police Pensions Regulations 1987, SI 1987/257, reg M1 (as added): see the text to notes 1-5 *supra*.

8 *Ibid* reg M2(1) (as added: see note 5 *supra*). A person who wishes the relevant police authority to commute a pension must give it written notice of commutation: see reg M2(5)-(7) (as so added). 'The relevant police authority', in relation to a pension credit member, means: (1) the police authority which employs the pension credit member from whose rights the pension credit member's pension credit is derived at the time when the pension sharing order takes effect; or (2) if he is not then employed by a police authority, the police authority by whom he was last employed: regs L1(4), M1 (as so added), Sch A (definition added by SI 2002/3202). For the

meaning of 'police authority' see PARA 409 note 2 ante. 'Pension debit member' means a member, whether an active member, a deferred member or a pensioner member, whose shareable rights are subject to a pension debit; and 'pension debit' means a debit under the Welfare Reform and Pensions Act 1999 s 29(1)(a) (see SOCIAL SECURITY AND PENSIONS): Police Pensions Regulations 1987, SI 1987/257, Sch A (definitions added by SI 2002/3202). 'Shareable rights' has the same meaning as that given by the Welfare Reform and Pensions Act 1999 s 27(2) (see SOCIAL SECURITY AND PENSIONS) and means any rights under a pension arrangement other than those described in the Pension Sharing (Valuation) Regulations 2000, SI 2000/1052, reg 2 (see SOCIAL SECURITY AND PENSIONS): Police Pensions Regulations 1987, SI 1987/257, Sch A (definition added by SI 2002/3202).

9 le under the Police Pensions Regulations 1987, SI 1987/257, reg M1 (as added): see the text to notes 1-5 supra.

10 Ibid reg M3(1) (as added: see note 5 supra). The relevant police authority may commute the pension for a lump sum if the pension credit member is suffering from serious ill-health before normal benefit age or if the aggregate of total benefits payable to the member, including those attributable, directly or indirectly, to pension credit rights, does not exceed £260 per annum at normal benefit age: see reg M3(2)-(5) (as so added; reg M3(4) amended by SI 2003/535).

11 See the Police Pensions Regulations 1987, SI 1987/257, reg M4 (as added: see note 5 supra).

12 le ibid reg H5 (as amended): see PARA 413 ante.

13 le ibid reg H6 (as amended): see PARA 413 ante.

14 le ibid reg H7: see PARA 413 ante.

15 le ibid reg L2 (as amended): see PARA 409 ante.

16 Ibid reg M5(1), (2) (as added: see note 5 supra). Apart from where provision is made by Pt M (regs M1-M19) (as added) or a contrary intention is otherwise indicated: (1) the Police Pensions Regulations 1987, SI 1987/257 (as amended) do not apply to pension credit members as such or to benefits payable to or in respect of them as such; (2) the benefits payable to or in respect of pension credit members as such are not aggregated for any purpose with benefits payable to or in respect of those persons in any other capacity; and (3) the benefits payable to or in respect of pension credit members deriving their pension credit benefits from one pension debit member are not aggregated for any purpose with benefits payable to or in respect of those persons as pension credit members deriving their pension credit benefits from any other pension debit member: reg M5(1) (as so added).

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### ***C. THE POLICE PENSION REGULATIONS 2006***

#### **418. Police Pensions Regulations 2006.**

The Police Pension Regulations 2006<sup>1</sup>, have effect from 6 April 2006<sup>2</sup> and make fresh provision in respect of police pensions<sup>3</sup>. The regulations apply to: (1) regular police officers<sup>4</sup> who first became such on or after 6 April 2006<sup>5</sup>; (2) certain regular police officers who first became such before 6 April 2006 and rejoin the police service on or after that date following a break in service<sup>6</sup>; (3) regular police officers who remain in service as at 6 April 2006 but who elect or had elected not to pay pension contributions under the Police Pensions Regulations 1987<sup>7</sup>, and who elect to pay contributions under the Police Pension Regulations 2006<sup>8</sup>; (4) regular police officers who remain in service as at 6 April 2006 and are paying pension contributions under the Police Pensions Regulations 1987 and who elect for the Police Pension Regulations 2006 to apply instead and for earlier pensionable service to count towards pension awards under the Police Pension Regulations 2006<sup>9</sup>.

The regulations make provision as to the payment of pension contributions by police officers subject to an election not to do so<sup>10</sup>, for the reckoning of pensionable service<sup>11</sup>, and as to the

time of voluntary or compulsory retirement<sup>12</sup>. Provision is also made for the calculation of pensionable pay and aggregate pension contributions for the purposes of awards<sup>13</sup>. Police officers may qualify for ordinary pensions, ill health pensions and deferred pensions<sup>14</sup>, and pensions may be paid in respect of deceased officers<sup>15</sup>. There are circumstances in which awards may be reviewed, withdrawn or forfeited<sup>16</sup>; and provision is made for the determination of medical questions related to eligibility for awards<sup>17</sup>. Officers may purchase increased benefits or 'added years'<sup>17</sup>. Provision is made as to cases where there is a pension sharing order<sup>18</sup>. There are financial provisions including provisions on transfer values<sup>19</sup>; and provisions for special cases namely: chief officers affected by alterations in police areas<sup>20</sup>, servicemen<sup>21</sup>, and transfers of police officers to or from a Scottish police force or the Police Service of Northern Ireland<sup>22</sup>.

The provisions of the Police Pensions Act 1976<sup>23</sup> relating to the disclosure of information, assignment of pension, and obtaining pension by self inflicted injury, apply to the scheme created by the Police Pension Regulations 2006. Similarly the provisions relating to injury awards<sup>24</sup> continue to apply<sup>25</sup>. Pensions payable under the scheme may qualify for increase in pursuance of the general statutory provisions governing the increase of public service pensions<sup>26</sup>.

1    Ie the Police Pension Regulations 2006, SI 2006/3415.

2    See *ibid* reg 1(2), (3).

3    See PARA 407 ante.

4    'Regular police officer' means a member of a home police force, the City of London Police Commissioner, an assistant City of London police commissioner, an inspector of constabulary and a police officer engaged on relevant service: Police Pension Regulations 2006, SI 2006/3415, reg 2(a), Sch 1. 'Home police force' means any police force within the meaning of the Police Act 1996 (see PARA 102 note 11 ante); and 'relevant service' has the meaning assigned to it by s 97(1) (see PARA 428 post): Police Pension Regulations 2006, SI 2006/3415, Sch 1. As to the City of London Police Commissioner see PARA 187 ante. As to Her Majesty's Inspectors of Constabulary see PARA 206 ante.

5    *Ibid* reg 6(1).

6    See *ibid* reg 6(2), Sch 2.

7    Ie the Police Pensions Regulations 1987, SI 1987/257 (as amended): see PARA 408 et seq ante.

8    See the Police Pension Regulations 2006, SI 2006/3415, reg 6(3), (4).

9    See *ibid* reg 6(5)-(9), Sch 3.

10   See *ibid* regs 7-9.

11   See *ibid* regs 10-16.

12   See *ibid* regs 17-22; and PARAS 239-241 ante.

13   See *ibid* regs 23-26.

14   See *ibid* regs 27-38.

15   See *ibid* regs 39-50.

16   See *ibid* regs 51-55.

17   See *ibid* regs 65-75.

17   See *ibid* regs 56-60.

18   See *ibid* regs 61-64. A 'pension sharing order' is an order under the Welfare Reform and Pensions Act 1999 s 28(1) (see SOCIAL SECURITY AND PENSIONS): Police Pension Regulations 2006, SI 2006/3415, Sch 1.

19 See *ibid* regs 76-85.

20 See *ibid* regs 86-87.

21 See *ibid* regs 88-94. 'Serviceman' means a person who immediately before undertaking a period of relevant service in the reserve forces was a regular police officer: reg 88. 'Relevant service in the reserve forces' means service in pursuance of a training obligation under the Reserve Forces Act 1980 ss 38, 40, 41, or the Reserve Forces Act 1996 Pt III (ss 22-27) or by virtue of a call out for permanent service or a recall under the Reserve Forces Act 1980 or the Reserve Forces Act 1996 Pt VII (ss 65-77); and 'the reserve forces' means those forces specified in the Reserve Forces Act 1996 s 1(2): Police Pension Regulations 2006, SI 2006/3415, reg 88. As to the reserve forces see ARMED FORCES vol 2(2) (Reissue) PARA 223 et seq.

22 See the Police Pension Regulations 2006, SI 2006/3415, regs 95-96.

23 In the Police Pensions Act 1976 s 8A (as added and amended) (see PARA 411 ante), s 9 (see PARA 412 ante), s 10 (as amended) (see PARA 414 ante).

24 In the Police (Injury Benefit) Regulations 2006, SI 2006/932.

25 See PARAS 412-415 ante.

26 See PARA 416 ante.

## UPDATE

### 418 Police Pensions Regulations 2006

NOTE 4--SI 2006/3415 Sch 1 amended: SI 2007/1932, SI 2009/2060. Definition of 'regular police officer' amended: SI 2008/1887, SI 2009/2060.

NOTE 6--SI 2006/3415 reg 6(2), Sch 2 amended: SI 2007/1932.

NOTE 9--SI 2006/3415 Sch 3 amended: SI 2007/1932.

NOTE 12--SI 2006/3415 regs 17-20 amended: SI 2008/1887, SI 2009/2060.

NOTE 13--SI 2006/3415 reg 23 amended: SI 2008/1887, SI 2009/2060.

NOTE 16--SI 2006/3415 reg 51 amended: SI 2008/1887, SI 2009/2060. SI 2006/3415 reg 52 amended: SI 2009/2060.

NOTE 20--SI 2006/3415 reg 86 amended: SI 2007/1932.

NOTE 24--SI 2006/932 amended: SI 2007/1932, SI 2008/1887, SI 2009/2060.

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## ***D. MERGER OF PENSION SCHEMES***

### **419. Power to merge police pension schemes.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> may: (1) revoke those provisions of the police pensions regulations<sup>3</sup> that apply to persons who became members of a police pension scheme<sup>4</sup> before 6 April 2006<sup>5</sup>; and (2) make equivalent provision establishing a single pension scheme for the benefit of those persons<sup>6</sup>. 'Equivalent provision' means provision having the same effect as the provisions revoked<sup>7</sup>. However, the regulations may make changes to the effect of the provisions revoked if the

changes are made as a result of consolidating the provisions of the different police pensions regulations into a single pension scheme<sup>8</sup>, and do not make the scheme less beneficial to any member of it than the police pension scheme of which he was previously a member<sup>9</sup>.

The first such regulations must be made by the Secretary of State with the consent of the Treasury<sup>10</sup>, and before making the regulations the Secretary of State must consult with the Police Negotiating Board<sup>11</sup>. The regulations may be framed so as to have effect as from a date before the making of the regulations<sup>12</sup>. Provision is made as to the making of amending regulations<sup>13</sup>. The provisions of the Police Pensions Act 1976<sup>14</sup> relating to information in connection with police pensions, assignment of pensions, and obtaining pension by self-inflicted injury, apply to regulations establishing or amending a merged scheme<sup>15</sup>, so far as relating to persons who are former members of a pension scheme established by regulations under that Act<sup>16</sup>, as they apply to regulations under that Act<sup>17</sup>. The Pensions (Increase) Act 1971 also applies to those persons<sup>18</sup>.

A pension scheme established under these provisions<sup>19</sup> is to be regarded for the purposes of the provisions relating to the taxation of pension schemes<sup>20</sup> as a continuation of each police pension scheme that it replaces, and not as a different scheme<sup>21</sup>.

1 The Police and Justice Act 2006 s 5, Sch 3 are to come into force as from a day to be appointed by order by the Secretary of State: see s 53(1). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 107 note 15 ante.

2 The power to make regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* s 49(2), (4). The power may be exercised so as to make different provision for different purposes or different areas, to make provision generally or for specified cases or circumstances, and to make incidental, supplemental, consequential, saving or transitional provision: s 49(3). A reference, however expressed, in any document (including an enactment) to regulations under the Police Pensions Act 1976 s 1 (as amended) (see PARA 407 ante) or regulations under the Police (Northern Ireland) Act 1998 s 25(2)(k) or s 26(2)(g) is to be read, where the context allows, as including a reference to regulations under the Police and Justice Act 2006 Sch 3: Sch 3 para 6. For the meaning of 'enactment' see PARA 102 note 5 ante.

3 'Police pensions regulations' means regulations under the Police Pensions Act 1976 s 1 (as amended) (see PARA 407 ante) and regulations under the Police (Northern Ireland) Act 1998 s 25(2)(k) or s 26(2)(g): Police and Justice Act 2006 Sch 3 para 1.

4 'Police pension scheme' means a pension scheme established by regulations under the Police Pensions Act 1976 s 1 (as amended) (see PARA 407 ante) (pensions for police in Great Britain) or a pension scheme established by regulations under the Police (Northern Ireland) Act 1998 s 25(2)(k) (pensions for members of Police Service of Northern Ireland) or s 26(2)(g) (pensions for members of Police Service of Northern Ireland Reserve): Police and Justice Act 2006 Sch 3 para 1. For the meaning of 'Great Britain' see PARA 102 note 7 ante.

5 *Ibid* Sch 3 para 2(1)(a).

6 *Ibid* Sch 3 para 2(1)(b).

7 *Ibid* Sch 3 para 2(2).

8 *Ibid* Sch 3 para 2(3)(a).

9 *Ibid* Sch 3 para 2(3)(b).

10 See *ibid* Sch 3 para 3(1), (2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

11 See *ibid* Sch 3 para 3(3). As to the Police Negotiating Board see PARA 424 post.

12 *Ibid* Sch 3 para 3(4).

13 The power to make amending regulations is exercisable as if any provision of the Police Pensions Act 1976 applying to regulations under s 1 (as amended) applied also to the amending regulations: Police and Justice Act 2006 Sch 3 para 4(1)(a). Similar provision is made in relation to the Police (Northern Ireland) Act

1998: see the Police and Justice Act 2006 Sch 3 para 4(1)(b), (c). 'Amending regulations' means regulations amending regulations previously made under Sch 3: Sch 3 para 4(2).

14    Ie the Police Pensions Act 1976 s 8A (as added) (see PARA 411 ante), s 9 (see PARA 412 ante), s 10 (as amended) (see PARA 414 ante).

15    Ie regulations under the Police and Justice Act 2006 Sch 3.

16    Ie under the Police Pensions Act 1976 s 1 (as amended): see PARA 407 ante.

17    Police and Justice Act 2006 Sch 3 para 5(1).

18    The Pensions (Increase) Act 1971 has effect as if a reference in Sch 2 para 15 or Sch 2 para 43 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 951) to a pension payable under the Police Pensions Act 1976 included a reference to a pension payable under regulations under the Police and Justice Act 2006 Sch 3 to a person who is a former member of a pension scheme established by regulations under the Police Pensions Act 1976 s 1 (as amended) (see PARA 407 ante): Police and Justice Act 2006 Sch 3 para 5(2).

19    Ie under *ibid* Sch 3.

20    Ie the Finance Act 2004 Pt 4 (ss 149-284) (as amended): see SOCIAL SECURITY AND PENSIONS.

21    Police and Justice Act 2006 Sch 3 para 7.

## UPDATE

### 419 Power to merge police pension schemes

TEXT AND NOTE 1--Appointed day is 31 December 2007: SI 2007/3203.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(vii) Compensation for Loss of Office or Diminution of Emoluments/420. Senior officers affected by alterations of police areas or pre-1972 local government reorganisation.

## (vii) Compensation for Loss of Office or Diminution of Emoluments

### 420. Senior officers affected by alterations of police areas or pre-1972 local government reorganisation.

Subject to and in accordance with regulations made by the Secretary of State<sup>1</sup>, a chief constable or assistant chief constable<sup>2</sup> who has suffered loss of office as a member of a police force or diminution of emoluments is entitled to compensation if this is attributable to a police amalgamation scheme made or approved under the Police Act 1964<sup>3</sup>, to an order altering police areas under the Police Act 1996<sup>4</sup>, or to an order relating to local government reorganisation made under the Local Government Act 1933 or the Local Government Act 1958<sup>5</sup>. The compensation payable comprises resettlement compensation<sup>6</sup>, long-term compensation<sup>7</sup>, retirement compensation<sup>8</sup>, and compensation to the widow, child or dependent relative of the officer concerned<sup>9</sup>. The compensating authority is the appropriate police authority<sup>10</sup>. Compensation may also be paid in other cases<sup>11</sup>.

1    See the Police (Compensation) Regulations 1965, SI 1965/564 (amended by SI 1966/730; SI 1970/969). As to the Secretary of State see PARA 107 note 15 ante.

2    As to ranks see PARA 230 ante.

3    Ie under the Police Act 1964 Pt I (ss 1-27) (repealed).

- 4    le an order under the Police Act 1996 s 32: see PARA 197 ante.
- 5    See the Local Government Act 1958 s 60(2) (amended by the Police Act 1964 s 63, Sch 9; and the Police Act 1996 s 103, Sch 7 para 12); and the Police (Compensation) Regulations 1965, SI 1965/564, regs 1, 2.
- 6    See *ibid* Pt II (regs 4-9) (amended by SI 1970/969).
- 7    See the Police (Compensation) Regulations 1965, SI 1965/564, Pt III (regs 10-15).
- 8    See *ibid* Pt IV (regs 16-25).
- 9    See *ibid* reg 23.
- 10   See *ibid* reg 38(1).
- 11   See the Metropolitan Police Force (Compensation for Loss of Office) Regulations 1994, SI 1994/1730, which apply to persons of the rank of inspector, chief inspector, superintendent and chief superintendent in the metropolitan police force. As to the metropolitan police force see PARA 137 ante.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(vii) Compensation for Loss of Office or Diminution of Emoluments/421. Senior officers affected by 1972 local government reorganisation.

#### **421. Senior officers affected by 1972 local government reorganisation.**

Subject to and in accordance with regulations made by the Secretary of State<sup>1</sup>, a chief constable<sup>2</sup>, deputy chief constable<sup>3</sup> or assistant chief constable<sup>4</sup> who has suffered loss of office as a member of a police force<sup>5</sup> or diminution of emoluments is (save as mentioned below) entitled to compensation if this is attributable to some provision of the Local Government Act 1972 or an instrument made under it<sup>6</sup>. As in the case of the earlier compensation provisions<sup>7</sup>, the types of compensation payable are resettlement compensation<sup>8</sup>, long-term compensation<sup>9</sup>, retirement compensation<sup>10</sup> and compensation to the widow, child or dependent relative of the officer concerned<sup>11</sup>, and the compensating authority is the appropriate police authority<sup>12</sup>.

Such an officer aged 50 years or more on 31 March 1974 who fulfilled certain prescribed conditions and retired on or before 1 April 1974 was entitled to elect that certain provisions for early retirement<sup>13</sup> should apply to him instead of provisions<sup>14</sup> for compensation<sup>15</sup>. An officer who so elected is excluded from any entitlement to compensation<sup>16</sup> but benefits by way of pension or allowance are payable to and in respect of him corresponding to those which would have been payable under the pensions regulations<sup>17</sup> had he completed certain additional service<sup>18</sup>.

- 1    See the Police (Compensation) Regulations 1974, SI 1974/759. These regulations are analogous to the Local Government (Compensation) Regulations 1974, SI 1974/463 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 7. As to the Secretary of State see PARA 107 note 15 ante.
- 2    As to the appointment and removal of chief constables see PARA 179 ante.
- 3    As to the appointment and removal of deputy chief constables see PARA 180 ante.
- 4    As to assistant chief constables see PARA 181 ante.
- 5    For the meaning of 'police force' see PARA 102 note 11 ante.
- 6    See the Local Government Act 1972 s 259(1); the Police (Compensation) Regulations 1974, SI 1974/759, reg 3(1); and LOCAL GOVERNMENT vol 69 (2009) PARA 7.
- 7    See the Police (Compensation) Regulations 1965, SI 1965/564; and PARA 420 ante.



- 8 See the Police (Compensation) Regulations 1974, SI 1974/759, Pt III (regs 6-10).
- 9 See *ibid* Pt IV (regs 11-16).
- 10 See *ibid* Pt V (regs 17-25).
- 11 See *ibid* reg 24.
- 12 See *ibid* reg 2(1). For the meaning of 'police authority' see PARA 139 note 1 *ante*.
- 13 *Ie* the provisions for early retirement and compensation contained in the Local Government Act 1972 s 260: see LOCAL GOVERNMENT vol 69 (2009) PARA 7.
- 14 *Ie* the provisions of *ibid* s 259 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 7.
- 15 See the Police (Retirement of Senior Officers) Regulations 1973, SI 1973/1944, reg 3 (amended by SI 1973/2024).
- 16 See the Police (Compensation) Regulations 1974, SI 1974/759, reg 3(2).
- 17 *Ie* under what is now the Police Pensions Regulations 1987, SI 1987/257: see PARA 407 *et seq ante*.
- 18 See the Police (Retirement of Senior Officers) Regulations 1973, SI 1973/1944, regs 4, 5, Schedule.

## UPDATE

### 421 Senior officers affected by 1972 local government reorganisation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(2) MEMBERS OF POLICE FORCES/(vii) Compensation for Loss of Office or Diminution of Emoluments/422. Increase of compensation payments.

### 422. Increase of compensation payments.

Compensation payments<sup>1</sup> may qualify for increase in pursuance of the statutory provisions governing the increase of the generality of public service pensions<sup>2</sup>, and the benefits by way of pension or allowance payable in the case of senior officers who elect for them<sup>3</sup> qualify for increase in the like manner and to the like extent as benefits under police pensions regulations<sup>4</sup>.

- 1 See PARAS 420-421 *ante*.
- 2 See the Pensions (Increase) Act 1971 s 5, Sch 2 (both as amended); the Pensions Increase (Police Compensation) Regulations 1974, SI 1974/1333; and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 951.
- 3 As to such election see PARA 421 *ante*.
- 4 See the Pensions Increase (Police Compensation) Regulations 1974, SI 1974/1333, regs 3(b), 4.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(3) POLICE REPRESENTATIVE INSTITUTIONS/423. The Police Federation and other associations.

### **(3) POLICE REPRESENTATIVE INSTITUTIONS**

#### **423. The Police Federation and other associations.**

The Police Federation for England and Wales<sup>1</sup> comprises all members of police forces<sup>2</sup> below the rank of superintendent and all police cadets<sup>3</sup>, and represents them in all matters affecting their welfare and efficiency other than questions of discipline and promotion affecting individuals<sup>4</sup>. It acts through both local<sup>5</sup> and central representative bodies<sup>6</sup> and must be entirely independent of, and, save as authorised by the Secretary of State<sup>7</sup>, unassociated with, any body or person outside the police service, but may employ such persons in an administrative or advisory capacity<sup>8</sup>.

The Secretary of State may make regulations<sup>9</sup> prescribing the constitution and proceedings of the Police Federation<sup>10</sup> or authorising the Police Federation to make rules as to such matters<sup>11</sup>; and such regulations may include in particular provisions as to membership<sup>12</sup>, financial arrangements<sup>13</sup> and the manner in which representations<sup>14</sup> may be made to police authorities, to chief officers of police and to the Secretary of State<sup>15</sup>. Before making any such regulations the Secretary of State must consult the three Central Committees of the Police Federation to which the regulations will relate, sitting together as a Joint Committee<sup>16</sup>.

The Police Federation is to be treated as a trade union recognised by every chief officer of police in England and Wales for the purposes of regulations made under the Health and Safety at Work etc Act 1974<sup>17</sup>.

Members of a police force of the rank of superintendent and above that rank are represented by non-statutory bodies, namely, the Superintendents' Association and the Association of Chief Police Officers<sup>18</sup>.

Similar provisions apply in relation to the Defence Police Federation<sup>19</sup>.

<sup>1</sup> The federation is known as 'the Police Federation': Police Federation Regulations 1969, SI 1969/1787, reg 4(1).

<sup>2</sup> For the meaning of 'police force' see PARA 102 note 11 ante. For these purposes, a member of the staff of the National Policing Improvement Agency who is a constable, and an employee of the Agency, is treated as a member of a police force in England and Wales; and references to police service are to be construed accordingly: Police Act 1996 s 59(7A) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 61, 65). As to the office of constable see PARA 101 et seq ante. As to the National Policing Improvement Agency see PARA 223 ante.

Members of a police force may not generally be members of a trade union: see PARA 426 post.

<sup>3</sup> See the Police Act 1996 ss 59(7), 60(6); and the Police Federation Regulations 1969, SI 1969/1787, reg 4(2). As to ranks see PARA 230 ante. As to police cadets see PARAS 113-118 ante.

<sup>4</sup> See the Police Act 1996 s 59(1). However, the Police Federation may represent a member of a police force at any proceedings brought under regulations made in accordance with s 50(3) (as amended) (see PARA 228 ante) or on an appeal from any such proceedings: s 59(2). Except on an appeal to a police appeals tribunal or as provided by s 84 (see PARA 247 ante), a member of a police force may only be represented under s 59(2) by another member of a police force: s 59(3). As to police appeals tribunals see PARA 300 et seq ante.

<sup>5</sup> There is a branch for each police force: Police Federation Regulations 1969, SI 1969/1787, reg 4(2). As to branches see regs 5-8 (reg 7 amended by SI 1986/1846; and the Police Federation Regulations 1969, SI 1969/1787, regs 5, 7, 8 amended, reg 6 substituted, and regs 6A, 6B added, by SI 2004/2660).

<sup>6</sup> Police Act 1996 s 59(4). There is an inspectors', a sergeants' and a constables' central conference: Police Federation Regulations 1969, SI 1969/1787, reg 9(1). As to central conferences see reg 9 (amended by SI

1971/1498; SI 1995/2768; SI 2004/2660); the Police Federation Regulations 1969, SI 1969/1787, reg 10 (amended by SI 2004/2660); and the Police Federation Regulations 1969, SI 1969/1787, reg 11 (amended by SI 1986/1846; SI 1995/2768). There is also an inspectors', a sergeants' and a constables' central committee: Police Federation Regulations 1969, SI 1969/1787, reg 12(1). As to central committees see reg 12 (amended by SI 1986/1846; SI 1995/2768; SI 2004/2660); and the Police Federation Regulations 1969, SI 1969/1787, reg 13 (amended by SI 1973/706; SI 2004/2660). In addition, there are women's regional conferences: see the Police Federation Regulations 1969, SI 1969/1787, reg 14 (amended by SI 1973/706; SI 1995/2768). See also the Sex Discrimination Act 1975 (Exemption of Police Federation Constitutional and Electoral Arrangements) Order 1989, SI 1989/2420. As to discrimination generally see PARA 405 ante.

7 The Secretary of State may authorise the Police Federation or a branch of the Police Federation to be associated with a person or body outside the police service in such cases and manner, and subject to such conditions and restrictions, as he may specify (Police Act 1996 s 59(6)(a)); and he may vary or withdraw an authorisation previously given, and anything for the time being authorised is not precluded by s 59(5) (see the text and note 8 infra) (s 59(6)(b)). As to the Secretary of State see PARA 107 note 15 ante.

8 Ibid s 59(5).

9 Any power of the Secretary of State to make regulations is exercisable by statutory instrument: *ibid* s 102. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 60(5). The regulations may contain such supplementary and transitional provisions as appear to the Secretary of State to be appropriate, including provisions adapting references in any enactment (including the Police Act 1996) to committees or other bodies of the Police Federation: s 60(3). The Police Federation Regulations 1969, SI 1969/1787 (as amended) have effect as if made under the Police Act 1996 s 60 by virtue of s 103(2), Sch 8 para 1(2). For the meaning of 'enactment' see PARA 102 note 5 ante.

10 Ibid s 60(1)(a). As to such matters see the Police Federation Regulations 1969, SI 1969/1787, Pt II (regs 4-14), Schs 2-5 (amended by SI 1971/1498; SI 1973/706; SI 1975/1739; SI 1986/1846; SI 1990/1575; SI 1995/2768; SI 2004/2660).

11 Police Act 1996 s 60(1)(b).

12 See *ibid* s 60(2)(a); and the Police Federation Regulations 1969, SI 1969/1787, reg 4.

13 See the Police Act 1996 s 60(2)(b); and the Police Federation Regulations 1969, SI 1969/1787, Pt III (regs 15A-20) (amended by SI 1971/1498; SI 1975/1739; SI 1989/564; SI 1990/1575; SI 2004/2660; SI 2006/594).

14 See the Police Federation Regulations 1969, SI 1969/1787, regs 7(4), 13(5) (amended by SI 2004/2660).

15 See the Police Act 1996 s 60(2)(c). For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'chief officer of police' see PARA 105 note 7 ante. Regulations may also make provision for the payment by the Secretary of State of expenses incurred in connection with the Police Federation and for the use by the Police Federation of premises provided by police authorities for police purposes (s 60(2)(d)); and for modifying any regulations under the Police Pensions Act 1976 (see PARA 407 *et seq* ante) or under the Police Act 1996 s 50 (as amended) (see PARA 228 ante) in relation to any member of a police force who is the secretary or an officer of the Police Federation and for requiring the Police Federation to make contributions in respect of the pay, pension or allowances payable to or in respect of any such person (s 60(2)(e)). For the meaning of 'police purposes' see PARA 217 note 2 ante.

16 Ibid s 60(4).

17 See the Health and Safety at Work etc Act 1974 s 51A(3)(a) (as added); and PARA 406 ante.

18 These associations are recognised bodies for the purposes of the Police Act 1996 s 64 (as amended): see PARA 426 post.

19 See the Ministry of Defence Police Act 1987 s 3; and PARA 123 ante.

## UPDATE

### 423 The Police Federation and other associations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 4--Police Act 1996 s 59(3) amended: Criminal Justice and Immigration Act 2008 Sch 22 para 5. For savings see SI 2008/2993.

NOTE 13--SI 1969/1787 reg 16 amended: SI 2007/2751.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(3) POLICE REPRESENTATIVE INSTITUTIONS/424. The Police Negotiating Board.

#### **424. The Police Negotiating Board.**

The Police Negotiating Board for the United Kingdom is a statutory body representative of the authorities which between them maintain the police forces in Great Britain<sup>1</sup> and the Police Service of Northern Ireland<sup>2</sup>, the persons who are members of those police forces or of the Police Service of Northern Ireland or who are police cadets<sup>3</sup>, the members of the staff of the National Policing Improvement Agency who are constables<sup>4</sup>, the Metropolitan Police Commissioner<sup>5</sup>, the Secretary of State<sup>6</sup> and the Scottish Ministers<sup>7</sup>. Its function is the consideration of questions relating to hours of duty, leave, pay and allowances, pensions, or the issue, use and return of police clothing, personal equipment and accoutrements<sup>8</sup>. The chairman, and any deputy chairman or chairmen, are appointed by the Prime Minister after consultation with the Scottish Ministers<sup>9</sup> but, subject to this, the Board is constituted in accordance with such arrangements, made after consultations between the Secretary of State and representative organisations, as appear to him satisfactory<sup>10</sup>. The Secretary of State may pay fees to the chairman and any deputy chairman or chairmen<sup>11</sup> and defray any expenses incurred by the Board<sup>12</sup>.

Before making regulations<sup>13</sup> with respect to anything within the functions of the Board<sup>14</sup> (other than pensions), the Secretary of State must take into consideration the Board's recommendations and supply the Board with a draft of the regulations<sup>15</sup>. Before issuing a document<sup>16</sup> setting out any rules and principles for contents of contracts of employment of constables employed as members of the staff of the National Policing Improvement Agency, the Secretary of State must consult the Board<sup>17</sup> and take into consideration any recommendation made by it<sup>18</sup>. Before determining the terms and conditions on which a constable is to be appointed to the staff of the National Policing Improvement Agency as an employee of the Agency, the Secretary of State (where the constable is to be appointed as the chief executive of the Agency) or the Agency (in any other case) must consult the Board<sup>19</sup> and take into consideration any recommendation made by it<sup>20</sup>. The arrangements as to the constitution of the Board<sup>21</sup> regulate the procedure for reaching agreement on such recommendations<sup>22</sup> made by the Board, and must include provision for arriving at such a recommendation by arbitration in such circumstances as may be determined by or under the arrangements<sup>23</sup>.

No regulations relating to pensions in relation to police cadets<sup>24</sup> may be made except after consultation with the Board<sup>25</sup>.

The Board is a public authority for the purposes of the Freedom of Information Act 2000<sup>26</sup>.

In carrying out its functions, the Board must have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between persons of different racial groups<sup>27</sup>.

1 For the meaning of 'police force' see PARA 102 note 11 ante. For the meaning of 'Great Britain' see PARA 102 note 7 ante.

2 See the Police Act 1996 s 61(1)(a) (s 61(1)(a), (b) amended by the Police (Northern Ireland) Act 2000 s 78(1), Sch 6 para 12(1), (2)).

- 3 See the Police Act 1996 s 61(1)(b) (as amended: see note 2 supra). As to police cadets see PARAS 113-118 ante.
- 4 See *ibid* s 61(1)(bb) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 61, 66). As to the office of constable see PARA 101 et seq ante. As to the National Policing Improvement Agency see PARA 223 ante.
- 5 See the Police Act 1996 s 61(1)(c). As to the Metropolitan Police Commissioner see PARA 183 ante.
- 6 See *ibid* s 61(1)(d). As to the Secretary of State see PARA 107 note 15 ante.
- 7 See *ibid* s 61(1)(e) (added by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, art 3, Sch 21 para 2(a)(ii)). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS. The Board is also representative of various police bodies in Scotland, and members of such bodies: see the Police Act 1996 s 61(1)(ca)-(cd) (added by the Police, Public Order and Criminal Justice (Scotland) Act 2006 s 101, Sch 6 para 5(1), (3)).
- 8 Police Act 1996 s 61(1). As to conditions of service and emoluments see PARA 392 et seq ante; and as to police pensions see PARA 407 et seq ante.
- 9 *Ibid* s 61(2) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 21 para 2(b)).
- 10 See the Police Act 1996 s 61(3) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 21 para 2(c)).
- 11 See the Police Act 1996 s 61(4)(a). Such payment requires the approval of the Treasury: see s 61(4)(a). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.
- 12 *Ibid* s 61(4)(b). The Scottish Ministers may make payments towards the expenses incurred by the Board in relation to the exercise by it of its function in or as regards Scotland: s 61(5) (added by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 21 para 2(d)).
- 13 *Ie* regulations under the Police Act 1996 s 50 (as amended) (see PARA 228 ante) or s 52 (as amended) (see PARA 114 ante) (s 62(1)(a)); or regulations under the Police and Justice Act 2006 s 1(3), Sch 1 para 19 (regulations as to constables who are members of the staff of the National Policing Improvement Agency: see PARA 225 ante) (Police Act 1996 s 62(1)(d) (added by the Police and Justice Act 2006 Sch 1 paras 61, 67(1), (2))).
- 14 *Ie* with respect to any of the matters mentioned in the Police Act 1996 s 61(1): see the text to note 8 supra.
- 15 *Ibid* s 62(1).
- 16 *Ie* under the Police and Justice Act 2006 Sch 1 para 18: see PARA 225 ante.
- 17 *Ie* about any provision in the document which relates to any of the matters mentioned in the Police Act 1996 s 61(1) (see the text to note 8 supra), other than pensions: s 62(1D)(a) (s 62(1D), (1E) added by the Police and Justice Act 2006 Sch 1 paras 61, 67(1), (3)).
- 18 Police Act 1996 s 62(1D)(b) (as added: note 17 supra).
- 19 *Ie* about any term or condition which relates to any of the matters mentioned in *ibid* s 61(1) (see the text to note 8 supra), other than pensions: s 62(1E)(a) (as added: note 17 supra).
- 20 *Ibid* s 62(1E)(b) (as added: note 17 supra).
- 21 *Ie* the arrangements referred to in *ibid* s 61(3) (as amended): see the text to note 10 supra.
- 22 *Ie* under *ibid* s 62(1), (1D) or (1E) (s 62(1D), (1E) as added): see the text to notes 13-20 supra.
- 23 *Ibid* s 62(2) (amended by the Police and Justice Act 2006 Sch 1 paras 61, 67(1), (4)).
- 24 *Ie* regulations under the Police Act 1996 s 52 (as amended): see PARA 114 ante.
- 25 *Ibid* s 62(3).
- 26 See the Freedom of Information Act 2000 s 3(1)(a)(i), Sch 1 Pt VI; and CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583.

27 See the Race Relations Act 1976 s 71(1) (as substituted), Sch 1A Pt II (as added); and DISCRIMINATION.

## UPDATE

### 424 The Police Negotiating Board

NOTE 15--The statutory meaning of the Police Act 1996 s 62(1) does not require any special weight to be given to a recommendation of the Police Negotiating Board; s 62(1) allows the decision-maker wide discretion to consider any recommendations: *R (on the application of Staff Side of the Police Negotiating Board) v Secretary of State for the Home Department* [2008] EWHC 1173 (Admin), [2008] All ER (D) 101 (Jun).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(3) POLICE REPRESENTATIVE INSTITUTIONS/425. The Police Advisory Board.

### 425. The Police Advisory Board.

The Police Advisory Board for England and Wales is a statutory body with the function of advising the Secretary of State<sup>1</sup> on general questions affecting the police<sup>2</sup>, and members of the staff of the National Policing Improvement Agency<sup>3</sup> who are constables<sup>4</sup>. The board's constitution and proceedings are such as the Secretary of State may determine after consulting organisations representing the interests of police authorities, members of police forces and police cadets<sup>5</sup>.

Before making regulations<sup>6</sup> relating to the government, administration and conditions of service of police forces or of police cadets<sup>7</sup>, regulations<sup>8</sup> relating to complaints<sup>9</sup>, or regulations<sup>10</sup> as to constables who are members of the staff of the National Policing Improvement Agency<sup>11</sup>, the Secretary of State must supply the Board with a draft of the regulations and take into consideration any representations made by it<sup>12</sup>.

The Board is a public authority for the purposes of the Freedom of Information Act 2000<sup>13</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 See the Police Act 1996 s 63(1).

3 As to the National Policing Improvement Agency see PARA 223 ante.

4 See the Police Act 1996 s 63(1C) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 61, 68(1), (2)). As to the office of constable see PARA 101 et seq ante.

5 Police Act 1996 s 63(2). For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'police force' see PARA 102 note 11 ante. As to police cadets see PARAS 113-118 ante.

6 Ie regulations under *ibid* s 50 (as amended) (see PARA 228 ante) or s 52 (as amended) (see PARA 114 ante), other than regulations with respect to any of the matters mentioned in s 61(1) (see PARA 424 ante).

7 *Ibid* s 63(3)(a) (s 63(3) substituted by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 68, 78(1), (3)).

8 Ie regulations under the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended): see PARA 346 ante.

9 Police Act 1996 s 63(3)(b) (as substituted: see note 7 *supra*).

10 Ie regulations under the Police and Justice Act 2006 s 1(3), Sch 1 para 19 (see PARA 225 ante), other than regulations with respect to any of the matters mentioned in the Police Act 1996 s 61(1) (see PARA 424 ante).

11 Ibid s 63(3)(c) (s 63(3) as substituted (see note 7 supra); s 63(3)(c) added by the Police and Justice Act 2006 Sch 1 paras 61, 68(1), (3)).

12 Police Act 1996 s 63(3) (as substituted: see note 7 supra).

13 See the Freedom of Information Act 2000 s 3(1)(a)(i), Sch 1 Pt VI (as amended); and CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583.

## UPDATE

### 425 The Police Advisory Board

TEXT AND NOTES 7-12--Police Act 1996 s 63(3) amended: Criminal Justice and Immigration Act 2008 Sch 22 para 6.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(3) POLICE REPRESENTATIVE INSTITUTIONS/426. Membership of trade unions.

### 426. Membership of trade unions.

Neither a member of a police force<sup>1</sup>, nor a police cadet<sup>2</sup>, nor a member of the staff of the National Policing Improvement Agency who is a constable and an employee of the Agency<sup>3</sup>, may be a member of any trade union or of any association having for its objects, or one of its objects, to control or influence the pay, pensions or conditions of service or any police force<sup>4</sup>. However, where a person was a member of a trade union before becoming a member of a police force, he may, with the consent of the chief officer of police<sup>5</sup>, continue to be a member of that union during the time of his service in the police force<sup>6</sup>.

Nothing in these provisions applies to membership of the Police Federation<sup>7</sup>, or of any body recognised by the Secretary of State<sup>8</sup> for these purposes as representing members of police forces who are not members of the Police Federation<sup>9</sup>.

1 For the meaning of 'police force' see PARA 102 note 11 ante.

2 The Police Act 1996 s 64 (as amended) applies to police cadets as it applies to members of a police force; and references to a police force or to service in a police force must be construed accordingly: s 64(4). As to police cadets see PARAS 113-118 ante.

3 Ibid s 64 (as amended) applies to a member of the staff of the National Policing Improvement Agency who is a constable and an employee of the Agency as it applies to a member of a police force; and references to a police force or to service in a police force must be construed accordingly: s 64(4C) (s 64(4C), (4D) added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 61, 69). As to the National Policing Improvement Agency see PARA 223 ante. As to the office of constable see PARA 101 et seq ante.

4 Police Act 1996 s 64(1).

5 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

6 Police Act 1996 s 64(2). In its application by virtue of s 64(4C) (as added) (see note 3 supra), s 64(2) has effect as if the reference to the chief officer of police were a reference to the chief executive of the National Policing Improvement Agency: s 64(4D) (as added: see note 3 supra).

7 As to the Police Federation and recognised bodies for higher ranks see PARA 423 ante.

8 As to the Secretary of State see PARA 107 note 15 ante.

9 Police Act 1996 s 64(5).

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#### **(4) SERVICE OVERSEAS, TEMPORARY SERVICE OUTSIDE THE FORCE AND SERVICE IN NORTHERN IRELAND**

##### **427. British overseas police corps.**

The Secretary of State<sup>1</sup> may make regulations with respect to the government and discipline of any persons engaged under his control in the performance of police duties on behalf of the government of any country or territory outside the United Kingdom<sup>2</sup> or in any foreign country for the time being in the occupation of Her Majesty<sup>3</sup>. The body in which persons in respect of whom regulations have been made are so serving is commonly referred to as an 'overseas corps'<sup>4</sup>. The expenses of the Secretary of State in respect of such a body are met out of money provided by Parliament<sup>5</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. In this context the Secretary of State is the Secretary of State with appropriate overseas responsibilities, who would normally be the Secretary of State for Foreign and Commonwealth Affairs: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 459 et seq.

2 For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

3 See the Police (Overseas Service) Act 1945 s 1(1), (2) (amended by the Police Pensions Act 1948 s 3, Sch 1 para 17). The following regulations, whose practical effect lapsed when the forces concerned were withdrawn from the countries mentioned, were made under this provision: the Police (Overseas Service) (Germany) Regulations 1947, SR & O 1947/1088 (amended by SR & O 1947/2194); the Police (Overseas Service) (Austria) Regulations 1947, SR & O 1947/1188 (amended by SR & O 1947/2198); the Police (Overseas Service) (Greece) Regulations 1948, SI 1948/313 (amended by SI 1948/1642); the Police (Overseas Service) (British Element Trieste Force) Regulations 1950, SI 1950/495; the Police (Overseas Service) (Malaya) Regulations 1951, SI 1951/484; the Police (Overseas Service) (Cyprus) Regulations 1955, SI 1955/1852; the Police (Overseas Service) (Nyasaland) Regulations 1960, SI 1960/1299; and the Police (Overseas Service) (Anguilla) Regulations 1969, SI 1969/372. Any regulations made must be laid before Parliament as soon as may be after they are made and if either House within 40 days resolves that the regulations should be annulled, they are void, but without prejudice to the making of new regulations: Police (Overseas Service) Act 1945 s 1(5).

4 See the definition of 'overseas corps' in the Police Pensions Regulations 1987, SI 1987/257, reg A4(1), Sch A; and PARA 408 note 4 ante.

5 See the Police (Overseas Service) Act 1945 s 1(1). As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(4) SERVICE OVERSEAS, TEMPORARY SERVICE OUTSIDE THE FORCE AND SERVICE IN NORTHERN IRELAND/428. Police officers engaged on service outside their force.

##### **428. Police officers engaged on service outside their force.**

A member of a police force<sup>1</sup> engaged on relevant service is to be treated as if he were not a member of that force during that service<sup>2</sup>. For these purposes, 'relevant service' means:



- 247 (1) temporary service on which a person is engaged in accordance with arrangements made to provide advice and assistance to international organisations<sup>3</sup>;
- 248 (2) temporary service on which a person is engaged in accordance with arrangements made with the Independent Police Complaints Commission<sup>4</sup>;
- 249 (3) temporary service as an assistant inspector of constabulary<sup>5</sup> on which a person is engaged with the consent of the appropriate authority<sup>6</sup>;
- 250 (4) temporary service under the Crown in connection with the provision by the Secretary of State<sup>7</sup> of common services<sup>8</sup>, or research or other services connected with the police<sup>9</sup>, on which a person is engaged with the consent of the appropriate authority<sup>10</sup>;
- 251 (5) temporary service with the Assets Recovery Agency on which a person is engaged with the consent of the appropriate authority<sup>11</sup>;
- 252 (6) temporary service as a member of the staff of the Serious Organised Crime Agency on which a person is engaged with the consent of the appropriate authority<sup>12</sup>;
- 253 (7) temporary service with the National Policing Improvement Agency on which a person is engaged with the consent of the appropriate authority<sup>13</sup>;
- 254 (8) temporary service as an adviser to the Secretary of State on which a person is engaged with the consent of the appropriate authority<sup>14</sup>;
- 255 (9) overseas service the expenses of which are payable by Parliament<sup>15</sup>, on which a person is engaged with the consent of the appropriate authority<sup>16</sup>;
- 256 (10) service in the Police Service of Northern Ireland, on which a person is engaged with the consent of the Secretary of State and the appropriate authority<sup>17</sup>;
- 257 (11) public service overseas as an officer<sup>18</sup>, on which a person is engaged with the consent of the appropriate authority<sup>19</sup>;
- 258 (12) service in connection with the provision by the Secretary of State of international development assistance on which a person is engaged with the consent of the appropriate authority<sup>20</sup>.

There is an exception where a pension, allowance or gratuity becomes payable to a member of a police force out of money provided by Parliament<sup>21</sup>, in which case he is entitled at the end of the period of relevant service to revert to his police force in the rank in which he was serving immediately before the period began<sup>22</sup>, and he is treated as if he had been serving in that force during the period of relevant service for the purposes of any scale prescribed by or under regulations<sup>23</sup> fixing his rate of pay by reference to his length of service<sup>24</sup>.

A person may, when engaged on relevant service, be promoted in his police force as if he were serving in that force<sup>25</sup>.

A member of a police force who: (a) has completed a period of relevant service<sup>26</sup>; or (b) while engaged on overseas service<sup>27</sup> is dismissed from that service by the established disciplinary authority<sup>28</sup> or is required to resign as an alternative to dismissal<sup>29</sup>; or (c) while engaged on relevant service with the Police Service of Northern Ireland<sup>30</sup>, is dismissed from that service or is required to resign as an alternative to dismissal<sup>31</sup>, may be dealt with<sup>32</sup> for anything done or omitted while he was engaged on that service as if that service had been service in his police force<sup>33</sup>.

A member of a police force engaged on relevant service within heads (2) to (8) above<sup>34</sup> continues to be a constable<sup>35</sup>, and is treated for certain purposes<sup>36</sup> as if he were a member of his police force<sup>37</sup>.

The Secretary of State is liable for any unlawful conduct of a member of a police force engaged on relevant service within head (3), (4) or (8) above in the performance or purported performance of his functions in like manner as an employer is liable in respect of any unlawful

conduct of his servants in the course of their employment<sup>38</sup>, and is, in the case of a tort, treated for all purposes as a joint tortfeasor<sup>39</sup>.

1 For the meaning of 'police force' see PARA 102 note 11 ante.

2 Police Act 1996 s 97(3). This provision is expressed to be subject to s 97(4)-(8) (as amended): see note 21 and the text to notes 25-37 infra.

3 Ibid s 97(1)(a). The arrangements referred to in the text are those made under s 26 (as amended): see PARA 172 ante.

4 Ibid s 97(1)(aa) (added by the Police Reform Act 2002 s 107(1), Sch 7 para 19(1)). The arrangements referred to in the text are those made under the Police Reform Act 2002 s 9, Sch 2 para 6(2): see PARA 356 ante. As to the Independent Police Complaints Commission see PARA 316 et seq ante.

5 Ie under the Police Act 1996 s 56: see PARA 206 ante.

6 Ibid s 97(1)(b). 'Appropriate authority', in relation to a member of a police force, means the chief officer of police acting with the consent of the police authority, except that in relation to the chief officer of police it means the police authority: s 97(2). For the meaning of 'chief officer of police' see PARA 105 note 7 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.

7 As to the Secretary of State see PARA 107 note 15 ante.

8 Police Act 1996 s 97(1)(c)(i). The services referred to in the text are such organisations and services as are described in s 57 (as amended): see PARA 215 ante.

9 Ibid s 97(1)(c)(ii).

10 Ibid s 97(1)(c).

11 Ibid s 97(1)(ce) (added by the Proceeds of Crime Act 2002 s 456, Sch 11 paras 1, 30(1), (2)).

12 Police Act 1996 s 97(1)(cf) (added by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 68, 82(1), (2)(c)). As to the Serious Organised Crime Agency see PARA 430 et seq post.

13 Police Act 1996 s 97(1)(cg) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 61, 72(1), (2)). As to the National Policing Improvement Agency see PARA 223 ante.

14 Police Act 1996 s 97(1)(d).

15 Ie under the Police (Overseas Service) Act 1945 s 1(1): see PARA 427 ante.

16 Police Act 1996 s 97(1)(e).

17 Ibid s 97(1)(f) (amended by the Police (Northern Ireland) Act 2000 s 78(1), Sch 6 para 12(1), (3)).

18 Ie pursuant to an appointment under the Overseas Development and Co-operation Act 1980 s 10 (repealed).

19 Police Act 1996 s 97(1)(g).

20 Ibid s 97(1)(h) (added by the International Development Act 2002 s 19(1), Sch 3 para 11(1), (2)). As from a day to be appointed 'relevant service' also includes temporary service with the Police Ombudsman for Northern Ireland on which a person is engaged in accordance with arrangements made under the Police (Northern Ireland) Act 1998 Sch 3 para 8: Police Act 1996 s 97(1)(ea) (prospectively added by the Police (Northern Ireland) Act 1998 s 74, Sch 4 para 20(3)). At the date at which this volume states the law no such day had been appointed.

21 Ie by virtue of regulations made under the Police Pensions Act 1976 (see PARA 407 et seq ante): see the Police Act 1996 s 97(3). In the case of relevant service to which head (9) in the text refers, the reference to regulations made under the Police Pensions Act 1976 is to be read as including a reference to regulations made under the Police (Overseas Service) Act 1945 s 1 (as amended) (see PARA 427 ante): Police Act 1996 s 97(4).

22 Ibid s 97(3)(a).

23 Ie regulations made under ibid s 50 (as amended): see PARA 228 ante.

24 Ibid s 97(3)(b).

25 Ibid s 97(5). In any such case: (1) the reference in s 97(3)(a) (see the text to notes 21-22 supra) to the rank in which he was serving immediately before the period of relevant service began is to be construed as a reference to the rank to which he is promoted (s 97(5)(a)); and (2) for the purposes mentioned in s 97(3)(b) (see the text to notes 23-24 supra) he is to be treated as having served in that rank from the time of his promotion (s 97(5)(b)). As to promotion see PARAS 236-238 ante.

26 See ibid s 97(6)(a) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 68, 82(1), (3); and the Police and Justice Act 2006 ss 1(3), 52, Sch 1 paras 61, 72(1), (3), Sch 15 Pt 1(A)). In this context, 'relevant service' is service within heads (1)-(8), (11)-(12) in the text: Police Act 1996 s 97(6)(a) (as so amended).

27 Ie within head (9) in the text.

28 Ie the authority established by regulations made under the Police (Overseas Service) Act 1945 s 1 (as amended): see PARA 427 ante.

29 Police Act 1996 s 97(6)(b).

30 Ie within head (11) in the text.

31 Police Act 1996 s 97(6)(c). As from a day to be appointed relevant service in this context also includes temporary service with the Police Ombudsman for Northern Ireland (see note 20 supra): s 97(6)(c) (prospectively amended by the Police (Northern Ireland) Act 1998 s 74, Sch 4 para 20(4)). At the date at which this volume states the law no such day had been appointed.

32 Ie under regulations made in accordance with the Police Act 1996 s 50(3) (as amended): see PARA 228 ante.

33 Ibid s 97(6). The provision relating to appeals against dismissals (ie s 85: see PARA 300 ante) applies accordingly: see s 97(6). For the purposes of s 97(6), a certificate certifying that a person has been dismissed, or required to resign as an alternative to dismissal, is evidence of the fact so certified, if: (1) in a case within s 97(6)(b) (see the text to notes 27-29 supra), it is given by the disciplinary authority referred to in that provision (s 97(7)(a)); or (2) in a case within s 97(6)(c) (see the text to notes 30-31 supra), it is given by or on behalf of the chief constable of the Police Service of Northern Ireland or such other person or authority as may be designated for the purposes of this provision by order of the Secretary of State (s 97(7)(b) (amended by the Police (Northern Ireland) Act 2000 Sch 6 para 12(1), (3)). As from a day to be appointed head (2) supra is amended so as to refer also to the certificate being given by the Police Ombudsman for Northern Ireland: Police Act 1996 s 97(7)(b) (prospectively amended by the Police (Northern Ireland) Act 1998 Sch 4 para 20(3)). At the date at which this volume states the law no such day had been appointed.

34 Police Act 1996 s 97(8) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 68, 82(1), (4); and the Police and Justice Act 2006 Sch 1 paras 61, 72(1), (3), Sch 15 Pt 1(A)).

35 Police Act 1996 s 97(8)(a).

36 Ie for the purposes of ibid s 30 (as amended) (jurisdiction: see PARA 109 ante), ss 59, 60 (both as amended) (police federations: see PARA 423 ante), s 64 (as amended) (membership of trade unions: see PARA 426 ante) and s 90 (as amended) (impersonation: see PARA 481 post).

37 Ibid s 97(8)(b).

38 As to such liability see TORT vol 45(2) (Reissue) PARA 329.

39 Police Act 1996 s 97(9) (amended by the Police Reform Act 2002 s 102(1)(a), (b), (2)(b)). As to joint tortfeasors see TORT vol 45(2) (Reissue) PARA 683.

## UPDATE

### 428 Police officers engaged on service outside their force

TEXT AND NOTES 11, 26, 34-37--1996 Act s 97(1)(ce) repealed, s 97(6)(a), (8) further amended: Serious Crime Act 2007 Sch 8 para 155, Sch 14.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/3. POLICE ORGANISATION/(4) SERVICE OVERSEAS, TEMPORARY SERVICE OUTSIDE THE FORCE AND SERVICE IN NORTHERN IRELAND/429. Cross-border aid of one police force by another.

#### **429. Cross-border aid of one police force by another.**

The chief officer of police<sup>1</sup> of a police force<sup>2</sup> in England or Wales may, on the application of the chief officer of a police force in Scotland or the chief constable of the Police Service of Northern Ireland, provide constables<sup>3</sup> or other assistance for the purpose of enabling the Scottish force or the Police Service of Northern Ireland to meet any special demand on its resources<sup>4</sup>.

The chief officer of a police force in Scotland may, on the application of the chief officer of police of a police force in England or Wales or the chief constable of the Police Service of Northern Ireland, provide constables or other assistance for the purpose of enabling the English or Welsh force or the Police Service of Northern Ireland to meet any special demand on its resources<sup>5</sup>.

The chief constable of the Police Service of Northern Ireland may, on the application of the chief officer of police of a police force in England or Wales or the chief officer of a police force in Scotland, provide constables<sup>6</sup> or other assistance for the purpose of enabling the English or Welsh force or the Scottish force to meet any special demand on its resources<sup>7</sup>.

If it appears to the Secretary of State<sup>8</sup> to be expedient in the interests of public safety or order that a police force should be reinforced or should receive other assistance for the purpose of enabling it to meet any special demand on its resources<sup>9</sup>, and that satisfactory arrangements<sup>10</sup> cannot be made, or cannot be made in time<sup>11</sup>, he may direct the chief officer of police of any police force in England or Wales, the chief officer of any police force in Scotland or the chief constable of the Police Service of Northern Ireland, as the case may be, to provide such constables or other assistance for that purpose as may be specified in the direction<sup>12</sup>.

While a constable is so provided for the assistance of another police force he is, notwithstanding any enactment<sup>13</sup>, under the direction and control of the chief officer of police of that other force (or, where that other force is a police force in Scotland or the Police Service of Northern Ireland, of its chief officer or the chief constable of the Police Service of Northern Ireland respectively)<sup>14</sup>, and has in any place the like powers and privileges as a member of that other force has in that place as a constable<sup>15</sup>.

The police authority<sup>16</sup> maintaining a police force for which assistance is so provided must pay to the police authority maintaining the force from which that assistance is provided such contribution as may be agreed upon between those authorities or, in the absence of any such agreement, as may be provided by any agreement subsisting at the time between all police authorities generally, or, in the absence of such general agreement, as may be determined by the Secretary of State<sup>17</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 As to the office of constable see PARA 101 et seq ante.

4 Police Act 1996 s 98(1) (s 98(1)-(3) amended by the Police (Northern Ireland) Act 2000 s 78(1), Sch 6 para 12(1), (4)). As to the national and international functions of the metropolitan police force see PARA 205 ante. As to the metropolitan police force see PARA 137 ante.

5 Police Act 1996 s 98(2) (as amended (see note 4 supra); and also amended by the Police Act 1997 s 134(1), Sch 9 para 87(2); and the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 68, 83(1), (2), Sch 17 Pt 2).

6 'Constable', in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000: Police Act 1996 s 98(8) (substituted by the Police (Northern Ireland) Act 2000 Sch 6 para 12(1), (5)).

7 Police Act 1996 s 98(3) (as amended (see note 4 supra); and also amended by the Police Act 1997 Sch 9 para 87(3); and the Serious Organised Crime and Police Act 2005 Sch 4 paras 68, 83(1), (2), Sch 17 Pt 2).

8 As to the Secretary of State see PARA 107 note 15 ante.

9 Police Act 1996 s 98(4)(a) (amended by the Police Act 1997 Sch 9 para 87(5)(a); and the Serious Organised Crime and Police Act 2005 Sch 4 paras 68, 83(1), (4)(a), Sch 17 Pt 2).

10 Ie under the Police Act 1996 s 98(1), (2) or (3) (all as amended): see the text to notes 1-7 supra.

11 Ibid s 98(4)(b) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 68, 83(1), (4)(b)).

12 Police Act 1996 s 98(4) (amended by the Police Act 1997 Sch 9 para 87(5)(b), Sch 10; and the Serious Organised Crime and Police Act 2005 Sch 4 paras 68, 83(1), (4)(b)).

13 Police Act 1996 s 98(5) (amended by the Police Act 1997 Sch 9 para 87(6)(a); and the Serious Organised Crime and Police Act 2005 Sch 4 paras 68, 83(1), (5)(a), Sch 17 Pt 2). For the meaning of 'enactment' see PARA 102 note 5 ante.

14 Police Act 1996 s 98(5)(a) (amended by the Police Act 1997 Sch 9 para 87(6)(b); the Police (Northern Ireland) Act 2000 Sch 6 para 12(1), (4); and the Serious Organised Crime and Police Act 2005 Sch 4 paras 68, 83(1), (5)(a), (b), Sch 17 Pt 2).

15 Police Act 1996 s 98(5)(b). A member of the metropolitan police force who is assigned to the protection of any person or property in Scotland has, in the discharge of that duty, the powers and privileges of a constable of a police force maintained under the Police (Scotland) Act 1967: Police Act 1996 s 99(1). A member of the metropolitan police force who is assigned to the protection of any person or property in Northern Ireland has, in the discharge of that duty, the powers and privileges of a constable of the Police Service of Northern Ireland: s 99(2) (amended by the Police (Northern Ireland) Act 2000 s 78(2)(b)).

16 For the meaning of 'police authority' see PARA 139 note 1 ante.

17 Police Act 1996 s 98(6).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(1) ESTABLISHMENT/(i) In general/430. Establishment of the Serious Organised Crime Agency.

## **4. SERIOUS ORGANISED CRIME AGENCY**

### **(1) ESTABLISHMENT**

#### **(i) In general**

#### **430. Establishment of the Serious Organised Crime Agency.**

The Serious Organised Crime Agency is a body corporate<sup>1</sup>. The Agency is led by a board<sup>2</sup> and has a Director General and such staff as it may appoint<sup>3</sup>. Its functions are those of preventing and detecting serious organised crime and contributing to the reduction of such crime in other ways and to the mitigation of its consequences<sup>4</sup>, and gathering, storing, analysing and disseminating information relevant to crime<sup>5</sup>.

The Agency is not to be regarded as the servant or agent of the Crown<sup>6</sup>, or as enjoying any status, immunity or privilege of the Crown<sup>7</sup>; and its property is not to be regarded as property of, or property held on behalf of, the Crown<sup>8</sup>. The records of the Agency are public records<sup>9</sup>.

1 See the Serious Organised Crime and Police Act 2005 s 1(1). As to bodies corporate see COMPANIES; CORPORATIONS.

The Agency replaces the National Criminal Intelligence Service and its Service Authority, and the National Crime Squad and its Service Authority, both of which are abolished: see s 1(3); and the NCIS and NCS (Abolition) Order 2006, SI 2006/540. The Serious Organised Crime and Police Act 2005 makes provision about the transfer to the Serious Organised Crime Agency of staff, property, rights and liabilities of those bodies: sees 58, Sch 3.

2 As to the constitution of the Agency see PARA 431 et seq post.

3 As to the Director General and other staff see PARAS 436-437 post.

4 See PARA 439 post.

5 See PARA 440 post.

6 Serious Organised Crime and Police Act 2005 s 1(2), Sch 1 para 20(a).

7 Ibid Sch 1 para 20(b). As to the legal status of bodies such as the Agency see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 951 et seq.

8 Ibid Sch 1 para 20.

9 See the Public Records Act 1958 s 10(1), Sch 1 paras 1, 3(1), Table Pt II (amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 para 6(a)); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835 et seq.

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## **(ii) The Board**

### **431. The board.**

The board of the Serious Organised Crime Agency consists of a chairman<sup>1</sup>, such number of ex-officio members as the Agency may from time to time determine<sup>2</sup>, and such number of other members (known as 'ordinary members') as the Secretary of State may so determine<sup>3</sup>. The following limits apply: (1) the number of ex-officio members must not at any time exceed such number as may for the time being be specified by the Secretary of State<sup>4</sup>; (2) the number of ordinary members must not at any time be less than the number of ex-officio members for the time being<sup>5</sup>; and (3) the total of the numbers of ex-officio members and ordinary members must not at any time be less than four<sup>6</sup>.

The chairman and the ordinary members are to be appointed by the Secretary of State<sup>7</sup>; and before appointing a person to hold office as chairman the Secretary of State must consult the Scottish Ministers<sup>8</sup>.

1 Serious Organised Crime and Police Act 2005 s 1(2), Sch 1 para 1(1)(a).

2 Ibid Sch 1 para 1(1)(b). The ex-officio members are the Director General of the Serious Organised Crime Agency, and such other employees of the Agency as may for the time being be appointed by the Director General after consulting the chairman: Sch 1 para 1(5). As to the Director General see PARA 437 post.

3 Ibid Sch 1 para 1(1)(c). As to the Secretary of State see PARA 107 note 15 ante. As to the tenure of office of the chairman and ordinary members see PARA 432 post. References in any enactment to members of the Serious Organised Crime Agency are (unless the context otherwise requires) references to any of its members mentioned in Sch 1 para 1: Sch 1 para 1(6). Except where the context otherwise requires: (1) 'enactment' includes an enactment contained in or made under an Act of the Scottish Parliament or Northern Ireland legislation, and an enactment comprised in subordinate legislation (s 177(2), (4)); and (2) references to enactments include enactments passed or made after 7 April 2005 (being the date of the passing of the Serious Organised Crime and Police Act 2005) (s 177(3), (4)). For the meaning of 'subordinate legislation' see PARA 168 note 20 ante. A person who is or has been the chairman or a member of the Serious Organised Crime Agency may not be appointed as the chairman or other member of the Independent Police Complaints Commission: Police Reform Act 2002 s 9(3)(da) (added by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 2(a)). A member of the Serious Organised Crime Agency is disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1, Sch 1 Pt II (amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 22, 24(1), (2)(a)). As to the Independent Police Complaints Commission see PARA 316 ante.

4 Serious Organised Crime and Police Act 2005 Sch 1 para 1(2)(a).

5 Ibid Sch 1 para 1(2)(b).

6 Ibid Sch 1 para 1(2)(c).

7 Ibid Sch 1 para 1(3).

8 Ibid Sch 1 para 1(4). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(1) ESTABLISHMENT/(ii) The Board/432. Tenure of office of board members.

#### **432. Tenure of office of board members.**

The chairman and the ordinary members of the board of the Serious Organised Crime Agency hold and vacate office as such in accordance with the terms of their respective appointments<sup>1</sup>. However, an appointment of a person to hold office as chairman or ordinary member must be for a term not exceeding five years<sup>2</sup>; and a person holding office as chairman or ordinary member may at any time resign that office by giving notice in writing to the Secretary of State<sup>3</sup>. Furthermore, the Secretary of State may by notice in writing remove a person from office as chairman or ordinary member if satisfied that: (1) he has without reasonable excuse failed, for a continuous period of three months<sup>4</sup>, to carry out his functions as chairman or ordinary member<sup>5</sup>; (2) he has without reasonable excuse been absent from three consecutive meetings of the Agency<sup>6</sup>; (3) he has been convicted (whether before or after his appointment) of a criminal offence<sup>7</sup>; (4) he is an undischarged bankrupt or his estate has been sequestered and he has not been discharged<sup>8</sup>; (5) he is the subject of a bankruptcy restrictions order or an interim order under the Insolvency Act 1986<sup>9</sup> or an order to the like effect made under any corresponding enactment in force in Scotland or Northern Ireland<sup>10</sup>; (6) he has made a composition or arrangement with, or granted a trust deed for, his creditors<sup>11</sup>; (7) he has failed to comply with the terms of his appointment<sup>12</sup>; or (8) he is otherwise unable or unfit to carry out his functions as chairman or ordinary member<sup>13</sup>.

A person who ceases to be the chairman or an ordinary member is eligible for re-appointment, except where he is removed from office by the Secretary of State under heads (1) to (8) above<sup>14</sup>.

The Director General ceases to be an ex-officio member of the Agency on ceasing to be Director General<sup>15</sup>. Any other ex-officio member of the Agency ceases to be such a member on ceasing to be an employee of the Agency<sup>16</sup>, or if the Director General by notice in writing revokes his appointment as ex-officio member<sup>17</sup>. An ex-officio member other than the Director

General may at any time resign his office as ex-officio member by giving notice in writing to the Director General<sup>18</sup>.

- 1 Serious Organised Crime and Police Act 2005 s 1(2), Sch 1 para 2. This provision is expressed to be subject to Sch 1 paras 3, 4: see the text to notes 2-13 infra. As to the appointment of the chairman and the ordinary members see PARA 431 ante.
- 2 Ibid Sch 1 para 3(a).
- 3 Ibid Sch 1 para 3(b). As to the Secretary of State see PARA 107 note 15 ante. For the meaning of 'writing' see PARA 115 note 9 ante.
- 4 For the meaning of 'month' see PARA 140 note 17 ante.
- 5 Serious Organised Crime and Police Act 2005 Sch 1 para 4(a).
- 6 Ibid Sch 1 para 4(b).
- 7 Ibid Sch 1 para 4(c).
- 8 Ibid Sch 1 para 4(d). As to bankruptcy and arrangements and compositions with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.
- 9 Ie under the Insolvency Act 1986 Sch 4A (as added): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.
- 10 Serious Organised Crime and Police Act 2005 Sch 1 para 4(e). For the meaning of 'enactment' see PARA 431 note 3 ante.
- 11 Ibid Sch 1 para 4(f).
- 12 Ibid Sch 1 para 4(g).
- 13 Ibid Sch 1 para 4(h).
- 14 Ibid Sch 1 para 5.
- 15 Ibid Sch 1 para 7(1). As to the Director General see PARA 437 post. As to ex-officio members see PARA 431 ante.
- 16 Ibid Sch 1 para 7(2)(a).
- 17 Ibid Sch 1 para 7(2)(b). Before revoking an appointment the Director General must consult the chairman: Sch 1 para 7(3).
- 18 Ibid Sch 1 para 7(4).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(1) ESTABLISHMENT/(ii) The Board/433. Remuneration of board members.

### **433. Remuneration of board members.**

The Serious Organised Crime Agency must pay to the chairman and each of the ordinary members such remuneration and allowances as may be determined by the Secretary of State<sup>1</sup>; and must, if required to do so by the Secretary of State, pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who is or has been the chairman or an ordinary member<sup>2</sup>, or make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person<sup>3</sup>. If the Secretary of State determines that there are special circumstances which make it right for a person ceasing to hold office as chairman or ordinary



member to receive compensation, the Agency must pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State<sup>4</sup>.

1 Serious Organised Crime and Police Act 2005 s 1(2), Sch 1 para 6(1). As to the chairman and ordinary members of the Serious Organised Crime Agency see PARA 431 ante. As to the Secretary of State see PARA 107 note 15 ante.

2 Ibid Sch 1 para 6(2)(a). Service as chairman of the Serious Organised Crime Agency is included among the kinds of service to which a scheme under the Superannuation Act 1972 s 1 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567) can apply: see the Serious Organised Crime and Police Act 2005 Sch 1 para 6(4). The Serious Organised Crime Agency must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to Sch 1 para 6(4) in the sums payable out of money provided by Parliament under the Superannuation Act 1972: Serious Organised Crime and Police Act 2005 Sch 1 para 6(5). As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427 et seq.

3 Ibid Sch 1 para 6(2)(b).

4 Ibid Sch 1 para 6(3).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(1) ESTABLISHMENT/(ii) The Board/434. Committees.

#### **434. Committees.**

The Serious Organised Crime Agency may establish committees<sup>1</sup>. Any committee so established may establish one or more sub-committees<sup>2</sup>; and any such committee or sub-committee must be chaired by a member of the Agency<sup>3</sup>. A person who is not a member of the Agency may be appointed to any such committee or sub-committee<sup>4</sup>. If a member of any such committee or sub-committee is neither a member of the Agency<sup>5</sup>, nor a member of its staff<sup>6</sup>, the Agency may pay to him such remuneration and allowances as it may determine<sup>7</sup>.

The Agency may, to such extent as it may determine, delegate any of its functions to any of its committees or to any members of its staff<sup>8</sup>. Any of the Agency's committees may, to such extent as the committee may determine, delegate any function conferred on it to any of its sub-committees or to any member of the Agency's staff<sup>9</sup>.

1 Serious Organised Crime and Police Act 2005 s 1(2), Sch 1 para 15(1).

2 Ibid Sch 1 para 15(2).

3 Ibid Sch 1 para 15(3). As to membership of the Serious Organised Crime Agency see PARA 431 ante.

4 Ibid Sch 1 para 15(4).

5 Ibid Sch 1 para 15(5)(a).

6 Ibid Sch 1 para 15(5)(b). As to the staff see PARA 436 post.

7 Ibid Sch 1 para 15(5). As to the remuneration of members of the Serious Organised Crime Agency see PARA 433 ante.

8 Ibid Sch 1 para 16(1). As to the functions of the Serious Organised Crime Agency see PARAS 439-440 post.

9 Ibid Sch 1 para 16(2).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(1) ESTABLISHMENT/(ii) The Board/435. Proceedings and documents.

#### **435. Proceedings and documents.**

The Serious Organised Crime Agency may regulate its own proceedings (including quorum)<sup>1</sup>, and the procedure (including quorum) of its committees and sub-committees<sup>2</sup>. However, any determination as to the quorum for meetings of the Agency or any of its committees or sub-committees must be made at a meeting of the Agency that is attended by both the chairman and the Director General<sup>3</sup>; and the quorum for meetings of the Agency must in the first instance be determined by a meeting of the Agency that is attended by at least five of its members<sup>4</sup>.

The validity of any proceedings<sup>5</sup> of the Agency, or any of its committees or sub-committees, is not affected by: (1) any vacancy among the members of the Agency or the committee or sub-committee<sup>6</sup>; (2) any defect in the appointment of any of those members or of the chairman or Director General<sup>7</sup>; or (3) any vacancy in the office of the chairman or the Director General<sup>8</sup>.

Any document purporting to be signed on behalf of the Agency must be received in evidence and, unless the contrary is proved, be taken to be so signed<sup>9</sup>.

1 Serious Organised Crime and Police Act 2005 s 1(2), Sch 1 para 17(1)(a). As to the Serious Organised Crime Agency see PARA 430 ante.

2 Ibid Sch 1 para 17(1)(b). As to committees and sub-committees see PARA 434 ante.

3 Ibid Sch 1 para 17(2). As to the chairman see PARA 431 ante; and as to the Director General see PARA 437 post.

4 Ibid Sch 1 para 17(3).

5 The proceedings to which this provision applies include those within ibid Sch 1 para 17(2) (see the text to note 3 supra), but not Sch 1 para 17(3) (see the text to note 4 supra): Sch 1 para 18(2).

6 Ibid Sch 1 para 18(1)(a).

7 Ibid Sch 1 para 18(1)(b).

8 Ibid Sch 1 para 18(1)(c).

9 Ibid Sch 1 para 19.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(1) ESTABLISHMENT/(iii) Director General and other Staff/436. Requirement for Agency to have Director General and staff.

#### **(iii) Director General and other Staff**

##### **436. Requirement for Agency to have Director General and staff.**

The Serious Organised Crime Agency must have a Director General<sup>1</sup>, and such other employees as it may appoint<sup>2</sup>. The Agency may make arrangements for persons to be seconded to it to serve as members of its staff<sup>3</sup>. A member of a police force<sup>4</sup> on temporary service with the Agency is under the direction and control of Agency<sup>5</sup>.

The Agency must pay to its employees such remuneration and allowances as it may determine<sup>6</sup>. The Agency may pay, or make payments in respect of, such pensions, allowances or gratuities to or in respect of its employees or former employees as it may determine<sup>7</sup>. The Employers' Liability (Compulsory Insurance) Act 1969 does not require insurance to be effected by the Agency<sup>8</sup>.

For the purposes of the statutory provisions relating to discrimination<sup>9</sup>, any constable<sup>10</sup> or other person who has been seconded to the Agency to serve as a member of its staff is treated as being employed by the Agency as respects any act done by it in relation to that person<sup>11</sup>. For the purposes of the provisions under the discrimination legislation<sup>12</sup> by which an employer or principal is liable for the acts of his employees or agents, as the case may be, any constable or other person who has been seconded to the Agency to serve as a member of its staff is treated as being employed by the Agency (and as not being employed by any other person)<sup>13</sup>; and anything done by such a person in the performance, or purported performance, of his functions as such a person is treated as done in the course of that employment<sup>14</sup>.

1 Serious Organised Crime and Police Act 2005 s 1(2), Sch 1 para 8(1)(a). As to the Director General see PARA 437 post.

2 Ibid Sch 1 para 8(1)(b). References in any enactment to members of staff of the Serious Organised Crime Agency are (unless the context otherwise requires) references to persons who either are employees of the Serious Organised Crime Agency or have been seconded to it to serve as members of its staff: Sch 1 para 8(4). A person who is or has been a member of the staff of the Serious Organised Crime Agency may not be appointed as the chairman or other member of the Independent Police Complaints Commission: Police Reform Act 2002 s 9(3)(da) (added by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 2(a)). A member of staff of the Serious Organised Crime Agency is disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1, Sch 1 Pt III (amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 22, 24(1), (2)(a)). As to the Independent Police Complaints Commission see PARA 316 ante.

3 Serious Organised Crime and Police Act 2005 Sch 1 para 8(2).

4 For these purposes, 'police force' means (unless the context otherwise requires) a police force in England, Wales or Scotland, or the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve: *ibid* s 42(1). For the meaning of 'police force' generally see PARA 102 note 11 ante.

5 Ibid Sch 1 para 8(3).

6 Ibid Sch 1 para 12(1). This provision does not apply to the Director General (to whom Sch 1 para 9(4) (see PARA 437 post) applies instead): Sch 1 para 12(2).

7 Ibid Sch 1 para 13(1). Employment with the Serious Organised Crime Agency is included among the kinds of employment to which a scheme under the Superannuation Act 1972 s 1 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567) can apply: see the Serious Organised Crime and Police Act 2005 Sch 1 para 13(2). If any person on ceasing to be employed by the Serious Organised Crime Agency becomes or continues to be one of its members, and was, by reference to his employment, a participant in a scheme under the Superannuation Act 1972 s 1 (as amended), the Minister for the Civil Service may determine that his service as a member of the Serious Organised Crime Agency is to be treated for the purposes of the scheme as if his service as a member were service as an employee of the Agency (whether or not any benefits are payable to or in respect of him by virtue of the Serious Organised Crime and Police Act 2005 Sch 1 para 6 (see PARA 433 ante)): Sch 1 para 13(3). The Serious Organised Crime Agency must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to Sch 1 para 13 in the sums payable out of money provided by Parliament under the Superannuation Act 1972: Serious Organised Crime and Police Act 2005 Sch 1 para 13(4). As to membership of the Serious Organised Crime Agency see PARA 431 ante. As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427 et seq.

8 Ibid Sch 1 para 14. As to the Employers' Liability (Compulsory Insurance) Act 1969 see INSURANCE vol 25 (2003 Reissue) PARA 685 et seq.

9 *Ie* the Sex Discrimination Act 1975 Pt II (ss 6-20A) (as amended); the Race Relations Act 1976 Pt II (ss 4-16) (as amended); the Disability Discrimination Act 1995 Pt II (ss 3A-18E) (as amended); the Sex Discrimination (Northern Ireland) Order 1976, SI 1976/1042 (NI 15), Pt II; the Race Relations (Northern Ireland) Order 1997, SI

1997/869 (NI 6), Pt II; and the Fair Employment and Treatment (Northern Ireland) Order 1998, SI 1998/3162 (NI 21), except Pt VII: Serious Organised Crime and Police Act 2005 s 56(2). See generally DISCRIMINATION.

10 As to the office of constable see PARA 101 et seq ante.

11 Serious Organised Crime and Police Act 2005 s 56(1).

12 Ie the Sex Discrimination Act 1975 s 41; the Race Relations Act 1976 s 32; the Disability Discrimination Act 1995 s 58; the Equality Act 2006 s 74; the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 30; the Sex Discrimination (Northern Ireland) Order 1976, SI 1976/1042 (NI 15), art 42; the Race Relations (Northern Ireland) Order 1997, SI 1997/869 (NI 6), art 32; and the Fair Employment and Treatment (Northern Ireland) Order 1998, SI 1998/3162 (NI 21), art 36: Serious Organised Crime and Police Act 2005 s 56(4)(a)-(h) (s 56(4)(g) added by the Equality Act 2006 s 75(5); Serious Organised Crime and Police Act 2005 s 56(4)(h) added by the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 31(5)). See generally DISCRIMINATION.

13 Serious Organised Crime and Police Act 2005 s 56(3)(a).

14 Ibid s 56(3)(b).

## UPDATE

### 436 Requirement for Agency to have Director General and staff

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 1, 2--See further 2005 Act Sch 1 para 8(1A) (added by Serious Crime Act 2007 Sch 8 para 174).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(1) ESTABLISHMENT/(iii) Director General and other Staff/437. The Director General.

### 437. The Director General.

The Director General<sup>1</sup> is appointed by the Secretary of State<sup>2</sup>, and employed by the Serious Organised Crime Agency on such terms and conditions as the Secretary of State may determine<sup>3</sup>. Before appointing a person as Director General the Secretary of State must consult the chairman of the Agency<sup>4</sup> and the Scottish Ministers<sup>5</sup>. A person may not be appointed for a term exceeding five years<sup>6</sup>. The Agency must pay to its Director General such remuneration and allowances as the Secretary of State may determine<sup>7</sup>.

The Secretary of State may call on the Director General to retire or to resign from his office as Director General in the interests of efficiency or effectiveness<sup>8</sup>, or by reason of any misconduct by the Director General<sup>9</sup>. However, before doing so the Secretary of State must have complied with the following provisions<sup>10</sup>: (1) he must give the Director General an explanation in writing<sup>11</sup> of the grounds<sup>12</sup> on which he proposes to call upon the Director General to retire or resign<sup>13</sup>, and an opportunity to make representations to him (including an opportunity to make them in person)<sup>14</sup>; and (2) he must consult the chairman of the Agency<sup>15</sup> and the Scottish Ministers<sup>16</sup>. If the Director General is so called upon to retire or resign, he must retire or resign with effect from such date as the Secretary of State may specify<sup>17</sup>, or such earlier date as may be agreed between him and the Secretary of State<sup>18</sup>.

If the Secretary of State considers that it is necessary to do so for the maintenance of public confidence in the Agency, he may suspend the Director General from duty, but before doing so he must have complied with heads (1) and (2) above<sup>19</sup>.

Nothing in these provisions<sup>20</sup> affects any power of the Secretary of State to terminate or suspend the Director General's employment with the Agency in accordance with the terms and conditions of that employment<sup>21</sup>.

Anything authorised or required to be done by the Director General may be done by any other member of the Agency's staff who is authorised for the purpose by the Director General (whether generally or specially)<sup>22</sup>.

1 As to the requirement for the Serious Organised Crime Agency to have a Director General see PARA 436 ante. As to the operational responsibility of the Director General see PARA 454 post.

2 Serious Organised Crime and Police Act 2005 s 1(2), Sch 1 para 9(1)(a). As to the Secretary of State see PARA 107 note 15 ante.

3 Ibid Sch 1 para 9(1)(b).

4 Ibid Sch 1 para 9(3)(a). As to the chairman see PARA 431 ante.

5 Ibid Sch 1 para 9(3)(b). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Ibid Sch 1 para 9(2).

7 Ibid Sch 1 para 9(4).

8 Ibid Sch 1 para 10(1)(a).

9 Ibid Sch 1 para 10(1)(b).

10 Ie ibid Sch 1 para 10(3)-(6): see the text to notes 11-16 infra.

11 For the meaning of 'writing' see PARA 115 note 9 ante.

12 Ie as mentioned in the Serious Organised Crime and Police Act 2005 Sch 1 para 10(1)(a) or (b): see the text to notes 8-9 supra.

13 Ibid Sch 1 para 10(3)(a). The Secretary of State must send a copy of the explanation to the chairman of the Serious Organised Crime Agency: Sch 1 para 10(5).

14 Ibid Sch 1 para 10(3)(b). The Secretary of State must consider any representations made by or on behalf of the Director General: Sch 1 para 10(4).

15 Ibid Sch 1 para 10(6)(a).

16 Ibid Sch 1 para 10(6)(b).

17 Ibid Sch 1 para 10(7)(a).

18 Ibid Sch 1 para 10(7)(b).

19 Ibid Sch 1 para 10(8).

20 Ie ibid Sch 1 para 10: see the text and notes 8-19 supra.

21 Ibid Sch 1 para 10(9).

22 Ibid Sch 1 para 11(1). This provision does not apply in any case in relation to which specific provision for the delegation of any function of the Director General is made by the Serious Organised Crime and Police Act 2005 or any other enactment: Sch 1 para 11(2). For the meaning of 'enactment' see PARA 431 note 3 ante. As to the staff of the Agency see PARA 436 ante.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(1) ESTABLISHMENT/(iv) Complaints and Misconduct/438. Procedures for the handling of complaints and conduct matters.

#### **(iv) Complaints and Misconduct**

##### **438. Procedures for the handling of complaints and conduct matters.**

The Independent Police Complaints Commission<sup>1</sup> and the Serious Organised Crime Agency must enter into an agreement for the establishment and maintenance in relation to members of the Agency's staff<sup>2</sup> of procedures corresponding or similar to those provided for by or under Part 2<sup>3</sup> of the Police Reform Act 2002<sup>4</sup>. An agreement must not be made or varied except with the approval of the Secretary of State<sup>5</sup>; and must not be terminated unless it is replaced by another such agreement<sup>6</sup> and the Secretary of State approves<sup>7</sup>.

An agreement may contain provision for enabling the Independent Police Complaints Commission to bring and conduct, or otherwise participate or intervene in, any proceedings which are identified by the agreement as disciplinary proceedings in relation to members of the Agency's staff<sup>8</sup>. An agreement must not confer any function on the Commission in relation to so much of any complaint or conduct matter<sup>9</sup> as relates to the direction and control of the Agency by the Director General or other members of the Agency<sup>10</sup>. Procedures established in accordance with an agreement have no effect in relation to anything done outside England and Wales by any member of the staff of the Agency<sup>11</sup>.

1 As to the Independent Police Complaints Commission see PARA 316 ante.

2 As to the staff of the Agency see PARA 436 ante.

3 I.e. the Police Reform Act 2002 Pt 2 (ss 9-29) (as amended).

4 Ibid s 26A(1) (s 26A added by the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2 paras 1, 8). The Police Reform Act 2002 Pt 2 (as amended) (see PARA 316 et seq ante) has effect in relation to the Serious Organised Crime Agency subject to amendments: see the Serious Organised Crime and Police Act 2005 s 55(1), Sch 2.

5 Police Reform Act 2002 s 26A(2)(a) (as added: see note 4 supra). As to the Secretary of State see PARA 107 note 15 ante.

6 Ibid s 26A(2)(b)(i) (as added: see note 4 supra).

7 Ibid s 26A(2)(b)(ii) (as added: see note 4 supra).

8 Ibid s 26A(3) (as added: see note 4 supra). For the meaning of 'disciplinary proceedings' see PARA 327 note 8 ante.

9 For the meanings of 'complaint' and 'conduct matter' see PARA 329 ante.

10 Police Reform Act 2002 s 26A(4) (as added: see note 4 supra). As to the Director General see PARA 437 ante. As to membership of the Serious Organised Crime Agency see PARA 431 ante.

11 Ibid s 26A(5) (as added: see note 4 supra). For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante.

#### **UPDATE**

##### **438 Procedures for the handling of complaints and conduct matters**

TEXT AND NOTES--See also 2002 Act s 26A(4A) (added by Serious Crime Act 2007 Sch 8 para 161).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(2) FUNCTIONS/439. Functions as to serious organised crime.

## **(2) FUNCTIONS**

### **439. Functions as to serious organised crime.**

The Serious Organised Crime Agency has the functions<sup>1</sup> of: (1) preventing and detecting serious organised crime<sup>2</sup>; and (2) contributing to the reduction of such crime in other ways and to the mitigation of its consequences<sup>3</sup>.

If, in exercising its function under head (1) above, the Agency becomes aware of conduct appearing to it to involve serious or complex fraud, it may thereafter exercise that function in relation to the fraud in question only with the agreement of the Director, or an authorised officer, of the Serious Fraud Office<sup>4</sup>, or if the Serious Fraud Office declines to act in relation to it<sup>5</sup>. If, in exercising its function under head (1) above, the Agency becomes aware of conduct appearing to it to involve revenue fraud<sup>6</sup>, it may thereafter exercise that function in relation to the fraud in question only with the agreement of the Commissioners for Revenue and Customs<sup>7</sup>. The issue of whether the Agency's function under head (1) above continued to be exercisable in any circumstances within these provisions<sup>8</sup> may not be raised in any criminal proceedings<sup>9</sup>.

Before exercising its function under head (2) above in any way in relation to revenue fraud, the Agency must consult the Commissioners for Revenue and Customs<sup>10</sup>.

1 'Functions' includes powers and duties: Serious Organised Crime and Police Act 2005 s 42(1).

2 Ibid s 2(1)(a). The Serious Organised Crime Agency's functions under s 2(1) are exercisable subject to s 2(3)-(5) (see the text to notes 4-7, 10 *infra*) (but s 2(3) does not apply to Scotland): s 2(2). For the meaning of 'serious crime', and as to the meaning of 'detecting and preventing crime', see PARA 494 note 6 *post*; definitions applied by s 42(3).

3 Ibid s 2(1)(b). As to the exercise of its functions see PARA 441 *post*.

4 Ibid s 2(3)(a). As to the Serious Fraud Office see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1089 *et seq*.

5 Ibid s 2(3)(b).

6 'Revenue fraud' includes fraud relating to taxes, duties and national insurance contributions: *ibid* s 2(7). As to national insurance see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 8 *et seq*.

7 Ibid s 2(4). As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 *et seq*.

8 *Ie* within *ibid* s 2(3) or (4): see the text to notes 4-7 *supra*.

9 Ibid s 2(6).

10 Ibid s 2(5).

## **UPDATE**

### **439 Functions as to serious organised crime**

TEXT AND NOTES--SOCA has the functions conferred on it (whether directly or through its staff) by the Proceeds of Crime Act 2002 (functions relating to the recovery of assets): 2005 Act s 2A (added by Serious Crime Act 2007 Sch 8 para 169).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(2) FUNCTIONS/440. Functions as to information relating to crime.

#### **440. Functions as to information relating to crime.**

The Serious Organised Crime Agency has the function<sup>1</sup> of: (1) gathering, storing, analysing and disseminating information relevant to the prevention, detection, investigation or prosecution of offences<sup>2</sup>; or (2) the reduction of crime in other ways or the mitigation of its consequences<sup>3</sup>. The Agency may disseminate such information to specified police forces<sup>4</sup>, special police forces<sup>5</sup>, law enforcement agencies<sup>6</sup>, or such other persons as it considers appropriate in connection with any of the matters mentioned in head (1) or head (2) above<sup>7</sup>.

1 For the meaning of 'functions' see PARA 439 note 1 ante.

2 Serious Organised Crime and Police Act 2005 s 3(1)(a).

3 Ibid s 3(1)(b). As to the exercise of functions see PARA 441 post.

4 Ibid s 3(2)(a). The specified police forces are police forces in the United Kingdom; and the States of Jersey Police Force, the salaried police force of the Island of Guernsey and the Isle of Man Constabulary: s 3(3). For the meaning of 'police force' see PARA 436 note 4 ante. For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

5 Ibid s 3(2)(b). 'Special police force' means the Ministry of Defence Police, the British Transport Police Force, the Civil Nuclear Constabulary, or the Scottish Crime and Drug Enforcement Agency: ss 3(5), 42(1) (s 3(5) amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 s 101, Sch 6 para 13(1), (2)). As to the Ministry of Defence Police see PARA 120 et seq ante. As to the British Transport Police Force see PARA 129 ante. As to the Civil Nuclear Constabulary see PARA 128 ante.

6 Serious Organised Crime and Police Act 2005 s 3(2)(c). 'Law enforcement agency' means the Commissioners for Revenue and Customs or any other government department, the Scottish Administration, any other person who is charged with the duty of investigating offences or charging offenders, or any other person who is engaged outside the United Kingdom in the carrying on of activities similar to any carried on by the Serious Organised Crime Agency or a police force: s 3(4). For the meaning of 'person' see PARA 110 note 6 ante. As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq. 'Government department' includes a Northern Ireland department: s 42(1). As to the Scottish Administration and Northern Ireland departments see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 Ibid s 3(2)(d).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(2) FUNCTIONS/441. Exercise of functions.

#### **441. Exercise of functions.**

In exercising its functions<sup>1</sup> the Serious Organised Crime Agency must have regard to<sup>2</sup>: (1) its current annual plan together with any priorities determined by it that are specified in the plan<sup>3</sup>; (2) any current strategic priorities determined by the Secretary of State<sup>4</sup>; and (3) any current performance targets established by it<sup>5</sup>. In exercising any function to which a code of practice relates, the Agency must have regard to the code<sup>6</sup>.



- 1 As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante.
- 2 Serious Organised Crime and Police Act 2005 s 4(1).
- 3 Ibid s 4(2)(a). As to annual plans see s 6; and PARA 443 post.
- 4 Ibid s 4(2)(b). As to the determination of strategic priorities by the Secretary of State see s 9; and PARA 449 post. As to the Secretary of State see PARA 107 note 15 ante.
- 5 Ibid s 4(2)(c).
- 6 Ibid s 4(3). As to codes of practice see s 10; and PARA 450 post.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(2) FUNCTIONS/442. Powers.

#### **442. Powers.**

The Serious Organised Crime Agency has the following general powers<sup>1</sup>. The Agency may: (1) institute criminal proceedings in England and Wales or Northern Ireland<sup>2</sup>; (2) at the request of the chief officer<sup>3</sup> of a police force<sup>4</sup> or of a special police force<sup>5</sup>, act in support of any activities of that force<sup>6</sup>; (3) at the request of any law enforcement agency<sup>7</sup>, act in support of any activities of that agency<sup>8</sup>; (4) enter into other arrangements for co-operating with bodies or persons<sup>9</sup> (in the United Kingdom<sup>10</sup> or elsewhere) which it considers appropriate in connection with the exercise of any of its functions<sup>11</sup> or any activities in relation to crime<sup>12</sup> other than serious crime<sup>13</sup>. The Agency may furnish such assistance as it considers appropriate in response to requests made by any government or other body exercising functions of a public nature in any country or territory outside the United Kingdom<sup>14</sup>.

In connection with exercising its functions the Agency may<sup>15</sup>: (a) enter into contracts and other agreements (whether legally binding or not)<sup>16</sup>; (b) acquire and dispose of property (including land)<sup>17</sup>; (c) borrow money<sup>18</sup>; and (d) do such other things as it thinks necessary or expedient<sup>19</sup>. However, the Agency may exercise the power conferred by head (b) or head (c) above only with the consent of the Secretary of State<sup>20</sup>.

- 1 Serious Organised Crime and Police Act 2005 s 5(1).
- 2 Ibid s 5(2)(a). For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante.
- 3 'Chief officer' means: (1) in relation to a police force in England and Wales, the chief officer of police; (2) in relation to a police force in Scotland, the chief constable; (3) in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the chief constable of the Police Service of Northern Ireland; (4) in relation to the States of Jersey Police Force or the salaried police force of the Island of Guernsey, the chief officer of that force; (5) in relation to the Isle of Man Constabulary, the chief constable; (6) in relation to the Ministry of Defence Police, the British Transport Police Force or the Civil Nuclear Constabulary, the chief constable; (7) in relation to the Scottish Crime and Drug Enforcement Agency, the Director General of that Agency; ibid s 42(1) (amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 s 101, Sch 6 para 13(1), (7)(a)). For the meaning of 'police force' see PARA 436 note 4 ante. For the meaning of 'chief officer of police' see PARA 105 note 7 ante. As to the Ministry of Defence Police see PARA 120 et seq ante. As to the British Transport Police Force see PARA 129 ante. As to the Civil Nuclear Constabulary see PARA 128 ante.
- 4 Is a police force within the Serious Organised Crime and Police Act 2005 s 3(3): see PARA 440 note 4 ante.
- 5 For the meaning of 'special police force' see PARA 440 note 5 ante.
- 6 Serious Organised Crime and Police Act 2005 s 5(2)(b).

7 'Law enforcement agency' has the meaning given by *ibid* s 3(4) (see PARA 440 note 6 ante): s 5(7).

8 *Ibid* s 5(2)(c).

9 For the meaning of 'person' see PARA 110 note 6 ante.

10 For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

11 *Ie* under the Serious Organised Crime and Police Act 2005 s 2 (see PARA 439 ante) or s 3 (see PARA 440 ante).

12 Despite the references to serious organised crime in *ibid* s 2(1) (see PARA 439 ante), the Serious Organised Crime Agency may carry on activities in relation to other crime if they are carried on for the purposes of any of the functions conferred on it by s 2 (see PARA 439 ante) or s 3 (see PARA 440 ante): s 5(3). Section 5(3) does not affect the generality of s 3(1) (see PARA 440 ante): s 5(4).

13 *Ibid* s 5(2)(d).

14 *Ibid* s 5(5). This provision does not apply to any request for assistance which could be made under the Crime (International Co-operation) Act 2003 s 13 (requests by overseas authorities to obtain evidence: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 904), and is not a request in relation to which the Serious Organised Crime Agency has functions under s 13 by virtue of an order under s 27(2) (see PARA 458 post): Serious Organised Crime and Police Act 2005 s 5(6).

15 *Ie* subject to the provisions of the Serious Organised Crime and Police Act 2005.

16 *Ibid* s 1(2), Sch 1 para 21(1)(a).

17 *Ibid* Sch 1 para 21(1)(b). This power includes accepting gifts of money, and gifts or loans of other property, on such terms as the Agency considers appropriate (which may include terms providing for the commercial sponsorship of any of the Agency's activities): Sch 1 para 21(2). For the meaning of 'land' see PARA 120 note 12 ante.

18 *Ibid* Sch 1 para 21(1)(c). As to grants by the Secretary of State see PARA 445 post. As to the Secretary of State see PARA 107 note 15 ante.

19 *Ibid* Sch 1 para 21(1)(d).

20 *Ibid* Sch 1 para 21(3). Such consent may be given with respect to a particular case or with respect to a class of cases, and subject to such conditions as the Secretary of State considers appropriate: Sch 1 para 21(4).

## UPDATE

### 442 Powers

TEXT AND NOTES 12, 13--2005 Act s 5(2)(d), (3), (4) amended: Serious Crime Act 2007 Sch 8 para 170.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(3) PLANS, REPORTS AND FINANCE/443. Annual plans.

## (3) PLANS, REPORTS AND FINANCE

### 443. Annual plans.

Before the beginning of each financial year<sup>1</sup> the Serious Organised Crime Agency must issue an annual plan setting out how it intends to exercise its functions during that year<sup>2</sup>. The annual plan must (in particular) set out how the Agency intends to exercise its functions in Scotland and in Northern Ireland<sup>3</sup>. The annual plan must also include a statement of: (1) any priorities

which the Agency has determined for that year<sup>4</sup>; (2) any current strategic priorities determined by the Secretary of State<sup>5</sup>; (3) any current performance targets established by the Agency<sup>6</sup>; and (4) the financial resources that are expected to be available to the Agency for that year<sup>7</sup>. The annual plan must state, in relation to each priority within head (1) or head (2) above, how the Agency intends to give effect to that priority<sup>8</sup>. Before issuing its annual plan for any financial year, the Agency must consult the Scottish Ministers and agree with them what provision the plan is to make<sup>9</sup> for Scotland<sup>10</sup>, and consult such other persons as it considers appropriate<sup>11</sup>.

The Agency must arrange for the annual plan to be published in such manner as it considers appropriate<sup>12</sup>; and must send a copy of the annual plan to the Secretary of State<sup>13</sup>, the Scottish Ministers<sup>14</sup>, the Commissioners for Revenue and Customs<sup>15</sup>, each police authority<sup>16</sup> for an area in Great Britain<sup>17</sup> and each joint police board and the Northern Ireland Policing Board<sup>18</sup>, the chief officer of each police force<sup>19</sup> in the United Kingdom<sup>20</sup>, and such other persons as it considers appropriate<sup>21</sup>.

1 'Financial year', in relation to the Serious Organised Crime Agency, means the period beginning with the date on which the Agency is established and ending with the following 31 March, and each successive period of 12 months ending with 31 March: Serious Organised Crime and Police Act 2005 s 42(1).

2 Ibid s 6(1). As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante.

3 Ibid s 6(2).

4 Ibid s 6(3)(a). Any priorities within s 6(3)(a) may relate: (1) to matters to which strategic priorities determined under s 9 (see PARA 449 post) also relate; or (2) to other matters, but in any event must be so framed as to be consistent with strategic priorities determined under s 9: s 6(4).

5 Ibid s 6(3)(b). As to the setting of strategic priorities by the Secretary of State see s 9; and PARA 449 post. As to the Secretary of State see PARA 107 note 15 ante.

6 Ibid s 6(3)(c).

7 Ibid s 6(3)(d). As to grants by the Secretary of State see PARA 445 post.

8 Ibid s 6(5).

9 Ie by virtue of ibid s 6(2): see the text to note 3 supra.

10 Ibid s 6(9)(a). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

11 Ibid s 6(9)(b).

12 Ibid s 6(6).

13 Ibid s 6(7)(a).

14 Ibid s 6(7)(b).

15 Ibid s 6(7)(c). As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

16 For the meaning of 'police authority' see PARA 139 note 1 ante.

17 For the meaning of 'Great Britain' see PARA 102 note 7 ante. As to police areas see PARA 136 ante.

18 Serious Organised Crime and Police Act 2005 s 6(7)(d). In this provision the reference to a police authority for an area in Great Britain does not include a constituent authority in an amalgamation scheme approved under the Police (Scotland) Act 1967 s 19(1): Serious Organised Crime and Police Act 2005 s 6(8). 'Joint police board' has the same meaning as in the Police (Scotland) Act 1967: Serious Organised Crime and Police Act 2005 s 42(1).

19 For the meaning of 'chief officer' see PARA 442 note 3 ante; and for the meaning of 'police force' see PARA 436 note 4 ante.

20 Serious Organised Crime and Police Act 2005 s 6(7)(e). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

21 Ibid s 6(7)(f).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(3) PLANS, REPORTS AND FINANCE/444. Annual reports.

#### **444. Annual reports.**

As soon as possible after the end of each financial year<sup>1</sup> the Serious Organised Crime Agency must issue an annual report on the exercise of its functions<sup>2</sup> during that year<sup>3</sup>. The annual report must include an assessment of the extent to which the annual plan for that year<sup>4</sup> has been carried out<sup>5</sup>. The Agency must arrange for the annual report to be published in such manner as it considers appropriate<sup>6</sup>; and must send a copy of the annual report to the Secretary of State<sup>7</sup>, the Scottish Ministers<sup>8</sup>, the Commissioners for Revenue and Customs<sup>9</sup>, each police authority for an area in Great Britain<sup>10</sup>, each joint police board<sup>11</sup> and the Northern Ireland Policing Board<sup>12</sup>, the chief officer of each police force<sup>13</sup> in the United Kingdom<sup>14</sup>, and such other persons as it considers appropriate<sup>15</sup>.

The Secretary of State must lay a copy of the annual report before Parliament<sup>16</sup>; and the Scottish Ministers must lay a copy of the annual report before the Scottish Parliament<sup>17</sup>.

1 For the meaning of 'financial year' see PARA 443 note 1 ante.

2 As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante.

3 Serious Organised Crime and Police Act 2005 s 7(1).

4 As to annual plans see ibid s 6; and PARA 443 ante.

5 Ibid s 7(2).

6 Ibid s 7(3).

7 Ibid s 7(4)(a). As to the Secretary of State see PARA 107 note 15 ante.

8 Ibid s 7(4)(b). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 Ibid s 7(4)(c). As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

10 For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'Great Britain' see PARA 102 note 7 ante. As to police areas see PARA 136 ante.

11 For the meaning of 'joint police board' see PARA 443 note 18 ante.

12 Serious Organised Crime and Police Act 2005 s 7(4)(d). In this provision the reference to a police authority for an area in Great Britain does not include a constituent authority in an amalgamation scheme approved under the Police (Scotland) Act 1967 s 19(1): Serious Organised Crime and Police Act 2005 s 7(5).

13 For the meaning of 'chief officer' see PARA 442 note 3 ante. For the meaning of 'police force' see PARA 436 note 4 ante.

14 Serious Organised Crime and Police Act 2005 s 7(4)(e). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

15 Ibid s 7(4)(f).

16 Ibid s 7(6).

17 Ibid s 7(7). As to the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(3) PLANS, REPORTS AND FINANCE/445. Grants by Secretary of State.

#### **445. Grants by Secretary of State.**

The Secretary of State<sup>1</sup> must make a grant to the Serious Organised Crime Agency in respect of each of its financial years<sup>2</sup>. The grant in respect of a financial year is to be paid at such time<sup>3</sup>, or in instalments of such amounts and at such times<sup>4</sup>, as the Secretary of State may determine (and any such time may fall within or after that year)<sup>5</sup>.

The Secretary of State must determine the amount of the grant to be made in respect of each of the Agency's financial years<sup>6</sup>; but a determination may, if the Secretary of State thinks fit, specify a single amount in respect of two or more financial years<sup>7</sup>. Where the Secretary of State makes any such determination, he must prepare a report setting out the determination<sup>8</sup>, and stating the considerations which he took into account in making it<sup>9</sup>. The Secretary of State must send the Agency a copy of each such report<sup>10</sup>, and lay a copy of each such report before the House of Commons<sup>11</sup>.

In connection with the exercise of his functions<sup>12</sup> relating to the determination of the amount of a grant, the Secretary of State may require the Agency to provide him with such information as he may specify<sup>13</sup>, and to do so within such period as he may specify<sup>14</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 Serious Organised Crime and Police Act 2005 s 17(1). For the meaning of 'financial year' see PARA 443 note 1 ante.

3 Ibid s 17(2)(a).

4 Ibid s 17(2)(b).

5 Ibid s 17(2).

6 Ibid s 18(1). A determination may be varied by a subsequent determination: s 18(3).

7 Ibid s 18(2).

8 Ibid s 18(4)(a).

9 Ibid s 18(4)(b).

10 Ibid s 18(5)(a).

11 Ibid s 18(5)(b).

12 Ie under ibid s 18.

13 Ibid s 18(6)(a).

14 Ibid s 18(6)(b).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(3) PLANS, REPORTS AND FINANCE/446. Charges and receipts.

#### **446. Charges and receipts.**

The Serious Organised Crime Agency may make charges in respect of the provision by it of any goods or services to any person<sup>1</sup>, or an agreement for the provision by it of any such goods or services<sup>2</sup>. Any charges made may include amounts calculated by reference to expenditure incurred, or expected to be incurred, by the Agency otherwise than directly in connection with the provision of the goods or services concerned<sup>3</sup>. Apart from grants made by the Secretary of State<sup>4</sup>, sums received<sup>5</sup> in respect of joint international investigation teams<sup>6</sup>, and sums borrowed by the Agency<sup>7</sup>, all sums received by it in the course of, or in connection with, the exercise of its functions<sup>8</sup> must be paid to the Secretary of State<sup>9</sup> unless he directs otherwise<sup>10</sup>. Any such sums received by the Secretary of State must be paid into the Consolidated Fund<sup>11</sup>.

1 Serious Organised Crime and Police Act 2005 s 19(1)(a). For the meaning of 'person' see PARA 110 note 6 ante.

2 Ibid s 19(1)(b).

3 Ibid s 19(2).

4 Ibid s 19(3)(a). As to such grants see s 17; and PARA 445 ante. As to the Secretary of State see PARA 107 note 15 ante.

5 Ie under ibid s 30(6): see PARA 460 post.

6 Ibid s 19(3)(b).

7 Ibid s 19(3)(c). As to such borrowings see Sch 1 para 21; and PARA 442 ante.

8 As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante.

9 Serious Organised Crime and Police Act 2005 s 19(3).

10 See ibid s 19(4).

11 Ibid s 19(5). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

#### **UPDATE**

#### **446 Charges and receipts**

TEXT AND NOTES 4-9--The 2005 Act s 19(3) is subject to any provision made by the Proceeds of Crime Act 2002: 2005 Act s 19(4A) (added by Serious Crime Act 2007 Sch 8 para 171).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(3) PLANS, REPORTS AND FINANCE/447. Accounts.

#### **447. Accounts.**

The Serious Organised Crime Agency must keep proper accounts and proper records in relation to the accounts<sup>1</sup>, and must prepare a statement of accounts in respect of each financial year<sup>2</sup>. A statement of accounts must be in such form, and contain such information, as the Secretary of State may direct<sup>3</sup>. The Agency must send copies of the statement of accounts for a financial year to the Secretary of State<sup>4</sup>, and to the Comptroller and Auditor General<sup>5</sup>, within such period following the end of the financial year as the Secretary of State may specify<sup>6</sup>. The Comptroller and Auditor General must examine, certify and report on the statement of accounts<sup>7</sup>, and lay copies of the statement and of his report before each House of Parliament<sup>8</sup>.

1 Serious Organised Crime and Police Act 2005 s 20(1)(a).

2 Ibid s 20(1)(b). For the meaning of 'financial year' see PARA 443 note 1 ante.

3 Ibid s 20(2). The Agency must comply with any direction given to it by the Secretary of State: see s 41. As to the Secretary of State see PARA 107 note 15 ante.

4 Ibid s 20(3)(a).

5 Ibid s 20(3)(b). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

6 Ibid s 20(3).

7 Ibid s 20(4)(a).

8 Ibid s 20(4)(b).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(4) CENTRAL SUPERVISION AND DIRECTION/448. General duty of Secretary of State and the Scottish Ministers.

#### **(4) CENTRAL SUPERVISION AND DIRECTION**

##### **448. General duty of Secretary of State and the Scottish Ministers.**

The Secretary of State<sup>1</sup> and the Scottish Ministers<sup>2</sup> must exercise the powers respectively conferred on him and them under the Serious Organised Crime and Police Act 2005<sup>3</sup> in such manner and to such extent as appear to him and them to be best calculated to promote the efficiency and effectiveness of the Serious Organised Crime Agency<sup>4</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Ie under the Serious Organised Crime and Police Act 2005 Pt 1 Ch 1 (ss 1-42) (as amended).

4 Ibid s 8. As to the Serious Organised Crime Agency see PARA 430 ante; and as to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(4) CENTRAL SUPERVISION AND DIRECTION/449. Strategic priorities.

##### **449. Strategic priorities.**

The Secretary of State<sup>1</sup> may determine strategic priorities for the Serious Organised Crime Agency<sup>2</sup>. Before determining any such priorities the Secretary of State must consult<sup>3</sup> the Agency<sup>4</sup>, the Scottish Ministers<sup>5</sup>, and such other persons as he considers appropriate<sup>6</sup>. The Secretary of State must arrange for any priorities he determines to be published in such manner as he considers appropriate<sup>7</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Serious Organised Crime and Police Act 2005 see PARA 448 ante.

2 Ibid s 9(1). In exercising its functions the Serious Organised Crime Agency must have regard to any current strategic priorities: see s 4; and PARA 441 ante. Any current strategic priorities must be included in the Agency's annual plan: see s 6; and PARA 443 ante.

3 As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

4 Serious Organised Crime and Police Act 2005 s 9(2)(a).

5 Ibid s 9(2)(b). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Ibid s 9(2)(c).

7 Ibid s 9(3).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(4) CENTRAL SUPERVISION AND DIRECTION/450. Codes of practice.

#### **450. Codes of practice.**

The Secretary of State<sup>1</sup> may issue codes of practice relating to the exercise by the Serious Organised Crime Agency of any of its functions<sup>2</sup>. The Secretary of State may from time to time revise the whole or any part of a code of practice issued by him<sup>3</sup>. Before issuing or revising a code of practice the Secretary of State must consult<sup>4</sup> the Agency<sup>5</sup>, the Scottish Ministers<sup>6</sup>, and such other persons as he considers appropriate<sup>7</sup>. The Secretary of State must lay before Parliament any code of practice issued by him<sup>8</sup> and any revisions of such a code<sup>9</sup>. However, the Secretary of State is not required to lay before Parliament<sup>10</sup>, or may exclude from what he does lay before Parliament<sup>11</sup>, anything the publication of which, in his opinion: (1) would be against the interests of national security<sup>12</sup>; or (2) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders<sup>13</sup>; or (3) could jeopardise the safety of any person<sup>14</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Serious Organised Crime and Police Act 2005 see PARA 448 ante.

2 Ibid s 10(1). In exercising any of its functions the Serious Organised Crime Agency must have regard to any code of practice: see s 4; and PARA 441 ante. As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante.

3 Ibid s 10(2). The Secretary of State must provide the Scottish Ministers with a copy of any code of practice he issues, or any revisions of such a code: s 10(7). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the exercise by the Scottish Ministers of their powers under the Serious Organised Crime and Police Act 2005 see PARA 448 ante.

4 As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

5 Serious Organised Crime and Police Act 2005 s 10(3)(a).

6 Ibid s 10(3)(b).



- 7 Ibid s 10(3)(c). For the meaning of 'person' see PARA 110 note 6 ante.
- 8 Ibid s 10(4)(a).
- 9 Ibid s 10(4)(b).
- 10 Ibid s 10(5)(a).
- 11 Ibid s 10(5)(b).
- 12 Ibid s 10(5), (6)(a).
- 13 Ibid s 10(5), (6)(b). For the meanings of 'prevention' and 'detection' of crime see PARA 494 note 6 post; definitions applied by s 42(3).
- 14 Ibid s 10(5), (6)(c).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(4) CENTRAL SUPERVISION AND DIRECTION/451. Reports to Secretary of State.

#### **451. Reports to Secretary of State.**

The Secretary of State<sup>1</sup> may require the Serious Organised Crime Agency to submit a report to him on such matters connected with the exercise of the Agency's functions<sup>2</sup>, or otherwise connected with any of the Agency's activities<sup>3</sup>, as may be specified in the requirement<sup>4</sup>. The Secretary of State must consult the Scottish Ministers<sup>5</sup> before imposing any requirement relating to any functions or activities of the Agency exercised or carried out in Scotland<sup>6</sup>, or exercised or carried out outside, but in relation to, Scotland<sup>7</sup>. The Secretary of State may arrange<sup>8</sup>, or require the Agency to arrange<sup>9</sup>, for a report to be published in such manner as he considers appropriate<sup>10</sup>. However, the Secretary of State may exclude any part of a report from publication if, in his opinion, publication of that part: (1) would be against the interests of national security<sup>11</sup>; or (2) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders<sup>12</sup>; or (3) could jeopardise the safety of any person<sup>13</sup>.

- 1 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Serious Organised Crime and Police Act 2005 see PARA 448 ante.
- 2 Ibid s 11(1)(a). As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante.
- 3 Ibid s 11(1)(b). As to the powers of the Serious Organised Crime Agency see PARA 442 ante.
- 4 Ibid s 11(1). A report submitted under s 11(1) must be in such form as may be so specified: s 11(2).
- 5 As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the exercise by the Scottish Ministers of their powers under the Serious Organised Crime and Police Act 2005 see PARA 448 ante.
- 6 Ibid s 11(3)(a).
- 7 Ibid s 11(3)(b).
- 8 Ibid s 11(4)(a).
- 9 Ibid s 11(4)(b).
- 10 Ibid s 11(4).
- 11 Ibid s 11(5)(a).

12 Ibid s 11(5)(b). For the meanings of 'prevention' and 'detection' of crime see PARA 494 note 6 post; definitions applied by s 42(3).

13 Ibid s 11(5)(c).

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#### **452. Power to direct submission of action plan.**

Where an inspection report<sup>1</sup> made to the Secretary of State<sup>2</sup> states: (1) that, in the opinion of the person making the report, the whole or any part of the Serious Organised Crime Agency is (whether generally or in particular respects) not efficient or not effective<sup>3</sup>; or (2) that, in that person's opinion, the whole or part of the Agency will cease to be efficient or effective (whether generally or in particular respects) unless remedial measures are taken<sup>4</sup>, if the Secretary of State considers that remedial measures are required in relation to any matters identified by the report, he may direct<sup>5</sup> the Agency to submit an action plan to him<sup>6</sup>, and to do so within such period as is specified in the direction<sup>7</sup>.

A direction may require an action plan to include: (a) provision setting out the steps that the Agency proposes should be taken in respect of the matters in respect of which the direction is given, and the performance targets that it proposes should be met<sup>8</sup>; (b) provision setting out the Agency's proposals as to the times within which those steps are to be taken and those targets met, and the means by which the success of the plan's implementation is to be measured<sup>9</sup>; (c) provision for the making of progress reports to the Secretary of State about the plan's implementation<sup>10</sup>; (d) provision as to the times at which, and the manner in which, any progress report is to be made<sup>11</sup>; and (e) provision for the duration of the plan and for it to cease to apply in circumstances determined by the Secretary of State<sup>12</sup>. But the Secretary of State may not direct the inclusion in an action plan of any requirement to do or not to do anything in a particular case identified for the purposes of the requirement<sup>13</sup>, or in relation to a particular person so identified<sup>14</sup>.

If the Secretary of State is of the opinion that any remedial measures contained in an action plan submitted to him by the Agency are inadequate<sup>15</sup>, he may notify it of that opinion and of his reasons for it<sup>16</sup>. If the Agency receives such a notification it must consider whether to revise the plan in the light of the matters notified to it<sup>17</sup>, and if it does revise the plan, it must send a copy of the revised plan to the Secretary of State<sup>18</sup>.

Where the Secretary of State exercises his power to give a direction that the Agency submit an action plan to him<sup>19</sup> he must prepare a report on his exercise of that power<sup>20</sup>. The Secretary of State must lay before each House of Parliament a copy of any such report<sup>21</sup>, and send a copy of any such report to the Scottish Ministers<sup>22</sup>.

1 'An inspection report' means a report under the Serious Organised Crime and Police Act 2005 s 16 (see PARA 453 post): s 12(7).

2 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Serious Organised Crime and Police Act 2005 see PARA 448 ante.

3 Ibid s 12(1)(a).

4 Ibid s 12(1)(b).

5 The Secretary of State may not give a direction unless the specified conditions are satisfied: *ibid* s 14(1). The specified conditions are: (1) the Agency must have been given such information about the Secretary of

State's grounds for proposing to give the direction as he considers appropriate for enabling it to make representations or proposals under heads (2) and (3) infra (s 14(2)(a)); (2) the Agency must have been given an opportunity of making representations about those grounds (s 14(2)(b)); (3) the Agency must have had an opportunity of making proposals for the taking of remedial measures that would make it unnecessary to give the direction (s 14(2)(c)); and (4) the Secretary of State must have considered any such representations and any such proposals (s 14(2)(d)). The Serious Organised Crime Agency must comply with any direction given to it by the Secretary of State: see s 41.

6 Ibid s 12(2)(a). An 'action plan' is a plan setting out the remedial measures which the Serious Organised Crime Agency proposes to take in relation to the matters in respect of which the direction is given: s 12(3). If there is already an action plan in force references in s 12 to the submission of an action plan to the Secretary of State include references to the submission of revisions of the existing plan, and the other provisions of s 12 have effect accordingly: s 12(8). The Secretary of State must consult the Scottish Ministers before giving any direction in connection with any functions or activities of the Agency exercised or carried out in Scotland, or exercised or carried out outside, but in relation to, Scotland: s 12(6). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 Ibid s 12(2)(b). The period must be a period ending not less than four, and not more than 12, weeks after the direction is given: s 12(2)(b).

8 Ibid s 12(4)(a).

9 Ibid s 12(4)(b).

10 Ibid s 12(4)(c).

11 Ibid s 12(4)(d).

12 Ibid s 12(4)(e).

13 Ibid s 12(5)(a).

14 Ibid s 12(5)(b). For the meaning of 'person' see PARA 110 note 6 ante.

15 Ibid s 13(1). The Secretary of State must consult the Scottish Ministers before forming an opinion for these purposes as to any remedial measures proposed in connection with any functions or activities of the Agency exercised or carried out in Scotland, or exercised or carried out outside, but in relation to, Scotland: s 13(3). References in s 13 to an action plan submitted to the Secretary of State include references to revisions submitted to him by virtue of s 12(8) (see note 6 supra): s 13(5).

16 Ibid s 13(2).

17 Ibid s 13(4)(a).

18 Ibid s 13(4)(b).

19 Ibid s 15(1).

20 Ibid s 15(2). Such a report is to be prepared at such time as the Secretary of State considers appropriate, and may relate to more than one exercise of the power: s 15(3).

21 Ibid s 15(4)(a).

22 Ibid s 15(4)(b). The Scottish Ministers must lay before the Scottish Parliament any copy of a report sent to them: s 15(5).

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### **453. Inspections.**

Her Majesty's Inspectors of Constabulary<sup>1</sup> ('HMIC') must inspect the Serious Organised Crime Agency from time to time<sup>2</sup>; and must also inspect the Agency if requested to do so by the

Secretary of State<sup>3</sup> either generally<sup>4</sup> or in respect of a particular matter<sup>5</sup>. Following an inspection, HMIC must report<sup>6</sup> to the Secretary of State on the efficiency and effectiveness of the Agency either generally<sup>7</sup>, or in the case of an inspection in respect of a particular matter<sup>8</sup>, in respect of the matter to which the inspection related<sup>9</sup>.

The Secretary of State must arrange for every report which he receives to be published in such manner as he considers appropriate<sup>10</sup>. The Secretary of State may exclude from publication any part of a report if, in his opinion, the publication of that part: (1) would be against the interests of national security<sup>11</sup>; or (2) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders<sup>12</sup>; or (3) might jeopardise the safety of any person<sup>13</sup>. The Secretary of State must send a copy of the published report to the Agency<sup>14</sup>. The Agency must prepare comments on the published report<sup>15</sup>, and arrange for its comments to be published in such manner as it considers appropriate<sup>16</sup>.

The inspectors must carry out such other duties for the purpose of furthering the efficiency and effectiveness of the Agency as the Secretary of State may from time to time direct<sup>17</sup>.

1 As to Her Majesty's Inspectors of Constabulary see PARA 206 ante.

2 Serious Organised Crime and Police Act 2005 s 16(1). Any inspection must be carried out jointly by HMIC and the Scottish inspectors if it is carried out wholly in Scotland (s 16(4)(a)), or, in a case where it is carried out partly in Scotland, to the extent that it is carried out there (s 16(4)(b)). 'The Scottish inspectors' means the inspectors of constabulary appointed under the Police (Scotland) Act 1967 s 33(1); Serious Organised Crime and Police Act 2005 s 16(13).

3 Before requesting an inspection that would fall to be carried out wholly or partly in Scotland, the Secretary of State must consult the Scottish Ministers: *ibid* s 16(3). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Serious Organised Crime and Police Act 2005 see PARA 448 ante. As to the power of the Secretary of State to require the Serious Organised Crime Agency to submit an action plan to him following an inspector's report see s 12; and PARA 452 ante.

4 *Ibid* s 16(2)(a).

5 *Ibid* s 16(2)(b).

6 A report must be in such form as the Secretary of State may direct: *ibid* s 16(6). Any person to whom a direction is given by the Secretary of State must comply with it: see s 41.

7 *Ibid* s 16(5)(a).

8 *Ie* an inspection under *ibid* s 16(2)(b): see the text to note 5 *supra*.

9 *Ibid* s 16(5)(b).

10 *Ibid* s 16(7).

11 *Ibid* s 16(8)(a).

12 *Ibid* s 16(8)(b). For the meanings of 'prevention' and 'detection' of crime see PARA 494 note 6 *post*; definitions applied by s 42(3).

13 *Ibid* s 16(8)(c).

14 *Ibid* s 16(9)(a). If s 16(4) (see note 2 *supra*) applied to the inspection, he must also send a copy of the report to the Scottish Ministers: see s 16(9)(b).

15 *Ibid* s 16(10)(a).

16 *Ibid* s 16(10)(b). The Agency must send a copy of any document published under s 16(10)(b) to the Secretary of State (s 16(11)(a)), and, if s 16(4) (see note 2 *supra*) applied to the inspection, to the Scottish Ministers (s 16(11)(b)).

17 *Ibid* s 16(12). See also note 6 *supra*.

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## **(5) OPERATIONAL MATTERS**

### **(i) In general**

#### **454. Operational responsibility of Director General.**

The Director General<sup>1</sup> of the Serious Organised Crime Agency has the function of exercising general operational control in relation to the activities carried out in the exercise of the Agency's functions<sup>2</sup>. This function includes deciding which particular operations are to be mounted in the exercise of any of those functions<sup>3</sup>, and how such operations are to be conducted<sup>4</sup>.

The Agency may only carry out activities in Scotland in relation to an offence which it suspects has been committed (or is being committed) if it does so with the agreement of the Lord Advocate<sup>5</sup>. In carrying out any such activities in Scotland the Agency must comply with such directions (whether general or special) as it may receive from the Lord Advocate or from the procurator fiscal<sup>6</sup>; and if it suspects that an offence has been committed (or is being committed) in Scotland, the Agency must report the matter to the procurator fiscal as soon as is practicable<sup>7</sup>.

1 As to the Director General see PARA 437 ante.

2 Serious Organised Crime and Police Act 2005 s 21(1). As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante.

3 Ibid s 21(2)(a).

4 Ibid s 21(2)(b).

5 Ibid s 22(1). As to the Lord Advocate see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 63.

6 Ibid s 22(2). As to procurators fiscal see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 63.

7 Ibid s 22(3).

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#### **455. Mutual assistance and law enforcement agencies: voluntary arrangements.**

If the chief officer<sup>1</sup> of a police force in the British Islands<sup>2</sup> or of a special police force<sup>3</sup>, or a law enforcement agency<sup>4</sup> operating in the British Islands<sup>5</sup>, notifies the Director General<sup>6</sup> of the Serious Organised Crime Agency that that force or agency has a special need for assistance from the Agency and requests the Director General to provide it with such assistance<sup>7</sup>, then in such a case the Director General may provide that force or agency with such members of the staff of the Agency<sup>8</sup>, or such other assistance<sup>9</sup>, as he considers appropriate in the

circumstances<sup>10</sup>. Where a member of the staff of the Agency is provided for the assistance of a police force, a special police force or a law enforcement agency, he is under the direction and control of the chief officer of the force or the head of the agency (as the case may be)<sup>11</sup>. Where the Agency provides assistance for a police force in the United Kingdom<sup>12</sup> or a special police force<sup>13</sup>, or a law enforcement agency operating in the United Kingdom<sup>14</sup>, the relevant police authority<sup>15</sup> or (as the case may be) that agency must pay to the Agency such contribution, if any, as may be agreed between them or, in the absence of agreement, as may be determined by the Secretary of State<sup>16</sup>.

If the Director General notifies the chief officer of a police force in the United Kingdom or of a special police force<sup>17</sup>, or a law enforcement agency operating in the United Kingdom<sup>18</sup>, that the Agency has a special need for assistance from that force or agency and requests it to provide the Agency with such assistance<sup>19</sup>, then in such a case the chief officer of that force or the agency in question may provide the Agency with such constables<sup>20</sup> or members of the staff of the agency<sup>21</sup>, or such other assistance<sup>22</sup>, as the chief officer or the agency considers appropriate in the circumstances<sup>23</sup>. Where a constable<sup>24</sup>, a police member or support staff member of the Scottish Crime and Drug Enforcement Agency<sup>25</sup>, or a member of the staff of a law enforcement agency<sup>26</sup>, is provided for the assistance of the Serious Organised Crime Agency, he is under the direction and control of the Director General<sup>27</sup>. Where the Agency is provided with assistance by a police force in the United Kingdom or a special police force<sup>28</sup>, or a law enforcement agency operating in the United Kingdom<sup>29</sup>, the Agency must pay to the relevant police authority or (as the case may be) that agency such contribution, if any, as may be agreed between them or, in the absence of agreement, as may be determined by the Secretary of State<sup>30</sup>.

1 For the meaning of 'chief officer' see PARA 442 note 3 ante.

2 For these purposes, 'police force', in relation to the British Islands, includes the States of Jersey Police Force, the salaried police force of the Island of Guernsey and the Isle of Man Constabulary: Serious Organised Crime and Police Act 2005 s 23(11). For the meaning of 'police force' generally see PARA 436 note 4 ante. For the meaning of 'British Islands' see PARA 223 note 9 ante.

3 Ibid s 23(1)(a). For the meaning of 'special police force' see PARA 440 note 5 ante.

4 'Law enforcement agency' has the meaning given by ibid s 3(4) (see PARA 440 note 6 ante) (subject to any territorial restrictions contained in s 23 (as amended)): s 23(11).

5 Ibid s 23(1)(b).

6 As to the Director General see PARA 437 ante. As to the operational responsibilities of the Director General see PARA 454 ante.

7 Serious Organised Crime and Police Act 2005 s 23(1).

8 Ibid s 23(2)(a). As to the staff of the Serious Organised Crime Agency see PARA 436 ante.

9 Ibid s 23(2)(b).

10 Ibid s 23(2).

11 Ibid s 23(6). As to liability of special police forces and law enforcement agencies for the unlawful conduct of persons so provided see PARA 461 post. As to liability of a police force for the unlawful conduct of persons so provided see the Police Act 1996 s 88 (as amended); and PARA 105 ante.

12 For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

13 Serious Organised Crime and Police Act 2005 s 23(8)(a).

14 Ibid s 23(8)(b).

15 'Relevant police authority' means: (1) in relation to a police force in Great Britain, the police authority maintaining that force (or, in the case of a police force for a combined area, the joint police board for that area); (2) in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the

Northern Ireland Policing Board; (3) in relation to the Ministry of Defence Police, the Secretary of State; (4) in relation to the British Transport Police Force, the British Transport Police Authority; (5) in relation to the Civil Nuclear Constabulary, the Civil Nuclear Police Authority; and (6) in relation to the Scottish Crime and Drug Enforcement Agency, the Agency itself: *ibid* s 23(11) (amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, art 6, Schedule para 6). For the meaning of 'police authority' see PARA 139 note 1 ante. For the meaning of 'Great Britain' see PARA 102 note 7 ante. For the meaning of 'joint police board' see PARA 443 note 18 ante. As to the Ministry of Defence Police see PARA 120 et seq ante. As to the Secretary of State see PARA 107 note 15 ante. As to the British Transport Police Force see PARA 129 ante. As to the Civil Nuclear Constabulary see PARA 128 ante.

16 Serious Organised Crime and Police Act 2005 s 23(8). As to the manner in which such receipts must be dealt with see s 19; and PARA 446 ante. If the assistance mentioned in s 23(8) or s 23(9) (see the text to notes 28-30 *infra*) is provided for or (as the case may be) by a police force in Scotland, the Scottish Crime and Drug Enforcement Agency, or the Scottish Administration, the Secretary of State must, before making a determination under the provision in question, consult the Scottish Ministers: s 23(10) (amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, Schedule para 6). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

17 Serious Organised Crime and Police Act 2005 s 23(3)(a).

18 *Ibid* s 23(3)(b).

19 *Ibid* s 23(3).

20 As to the office of constable see PARA 101 et seq ante.

21 Serious Organised Crime and Police Act 2005 s 23(4)(a). For these purposes, 'constables or members of staff', in relation to the Scottish Crime and Drug Enforcement Agency, means police members or support staff members of that Agency: s 23(5) (substituted by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, Schedule para 6).

22 Serious Organised Crime and Police Act 2005 s 23(4)(b).

23 *Ibid* s 23(4).

24 *Ibid* s 23(7)(a).

25 *Ibid* s 23(7)(b) (substituted by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, Schedule para 6).

26 Serious Organised Crime and Police Act 2005 s 23(7)(c).

27 *Ibid* s 23(7). This applies despite anything in, or in any agreement made under, any other enactment: s 23(7). For the meaning of 'enactment' see PARA 431 note 3 ante. As to the liability of the Serious Organised Crime Agency for acts of seconded staff see PARA 459 post.

28 *Ibid* s 23(9)(a).

29 *Ibid* s 23(9)(b).

30 *Ibid* s 23(9). See also note 16 *supra*.

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#### **456. Mutual assistance and law enforcement agencies: directed arrangements.**

Where it appears to the Secretary of State<sup>1</sup>: (1) that a specified body<sup>2</sup> has a special need for assistance from the Serious Organised Crime Agency or that the Agency has a special need for assistance from such a body<sup>3</sup>; (2) that it is expedient for such assistance to be provided by the Agency or (as the case may be) the body<sup>4</sup>; and (3) that satisfactory voluntary arrangements<sup>5</sup>

cannot be made, or cannot be made in time<sup>6</sup>, then in such a case the Secretary of State may (as appropriate) direct<sup>7</sup>:

- 259 (a) the chief officer<sup>8</sup> of the police force to provide such constables<sup>9</sup> or other assistance for the purpose of meeting the need in question as may be specified in the direction<sup>10</sup>;
- 260 (b) the chief officer of the special police force to provide such constables or other persons, or such other assistance, for the purpose of meeting the need in question as may be so specified<sup>11</sup>;
- 261 (c) the head of the law enforcement agency to provide such members of the staff of that agency or other assistance for the purpose of meeting the need in question as may be so specified<sup>12</sup>;
- 262 (d) the Director General<sup>13</sup> of the Agency to provide such members of the staff of that Agency or other assistance for the purpose of meeting the need in question as may be so specified<sup>14</sup>.

Similar provision is made in relation to Scotland<sup>15</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 The specified bodies are: (1) any police force in England and Wales or Northern Ireland; (2) any special police force other than the Scottish Crime and Drug Enforcement Agency; and (3) any law enforcement agency operating in the United Kingdom other than the Scottish Administration: Serious Organised Crime and Police Act 2005 s 24(2) (amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, art 6, Schedule para 6). 'Law enforcement agency' has the meaning given by the Serious Organised Crime and Police Act 2005 s 3(4) (see PARA 440 note 6 ante) (subject to the territorial restriction contained in s 24(2) (as amended)); s 24(6). For the meaning of 'police force' see PARA 436 note 4 ante. For the meaning of 'special police force' see PARA 440 note 5 ante. For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

3 Ibid s 24(1)(a).

4 Ibid s 24(1)(b).

5 Ie under ibid s 23 (as amended): see PARA 455 ante.

6 Ibid s 24(1)(c).

7 Any person to whom a direction is given by the Secretary of State must comply with the direction: see ibid s 41. The provisions of s 23(6)-(9) (see PARA 455 ante) apply in relation to assistance provided under s 24 (as amended) by the Serious Organised Crime Agency to a police force, a special police force or a law enforcement agency, or to the Serious Organised Crime Agency by a police force, a special police force or a law enforcement agency, as they apply in relation to assistance so provided under s 23 (as amended): s 24(5). For the meaning of 'person' see PARA 110 note 6 ante.

8 For the meaning of 'chief officer' see PARA 442 note 3 ante.

9 As to the office of constable see PARA 101 et seq ante.

10 Serious Organised Crime and Police Act 2005 s 24(3)(a). As to the liability of the Serious Organised Crime Agency for acts of seconded staff see PARA 459 post.

11 Ibid s 24(3)(b).

12 Ibid s 24(3)(c). A direction under this provision requires the consent of the Treasury if it is to be given to the Commissioners for Revenue and Customs: s 24(4). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

13 As to the Director General see PARA 437 ante. As to the operational responsibilities of the Director General see PARA 454 ante.



14 Serious Organised Crime and Police Act 2005 s 24(3)(d). As to liability of special police forces and law enforcement agencies for the unlawful conduct of persons so provided see PARA 461 post. As to liability of a police force for the unlawful conduct of persons so provided see the Police Act 1996 s 88 (as amended); and PARA 105 ante. As to the staff of the Serious Organised Crime Agency see PARA 436 ante.

15 See the Serious Organised Crime and Police Act 2005 s 25.

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#### **457. Use of police premises, equipment etc.**

Arrangements may be made between the Serious Organised Crime Agency<sup>1</sup> and the relevant police authority<sup>2</sup>, under which the Agency may use such premises, equipment or other material, facilities or services made available by a police force in England and Wales or Northern Ireland as are specified or described in the arrangements<sup>3</sup>. If it appears to the Secretary of State<sup>4</sup> that it is expedient for such arrangements to be made between the Agency and the relevant police authority<sup>5</sup>, and that satisfactory arrangements<sup>6</sup> cannot be made, or cannot be made in time<sup>7</sup>, he may direct<sup>8</sup> the Agency and that authority to enter into such arrangements as are specified in the direction<sup>9</sup>. Before giving such a direction to the Agency or the relevant police authority the Secretary of State must notify that body that he is proposing to give the directions<sup>10</sup>, and consider any representations made to him by that body<sup>11</sup>.

Any arrangements under these provisions<sup>12</sup> may be varied or terminated by agreement between the parties<sup>13</sup>; but arrangements entered into in pursuance of a direction by the Secretary of State may not be so terminated without his consent<sup>14</sup>.

Where any expenditure is incurred by the relevant police authority by virtue of any arrangements under these provisions<sup>15</sup>, the Agency must pay to the authority such contribution, if any, in respect of that expenditure as may be agreed between them<sup>16</sup> or, in the absence of agreement, as may be determined by the Secretary of State<sup>17</sup>.

1 Serious Organised Crime and Police Act 2005 s 26(1)(a).

2 Ibid s 26(1)(b). 'Relevant police authority' means in relation to a police force in England and Wales, the police authority maintaining that force; and in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Northern Ireland Policing Board: s 26(7). For the meaning of 'police force' see PARA 436 note 4 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.

3 Ibid s 26(1).

4 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Serious Organised Crime and Police Act 2005 see PARA 448 ante.

5 Serious Organised Crime and Police Act 2005 s 26(2)(a).

6 Ie under ibid s 26(1): see the text to notes 1-3 supra.

7 Ibid s 26(2)(b).

8 Any person to whom a direction is given by the Secretary of State must comply with the direction: ibid s 41. For the meaning of 'person' see PARA 110 note 6 ante.

9 Ibid s 26(2).

10 Ibid s 26(3)(a).

11 Ibid s 26(3)(b).

- 12    Ie under ibid s 26.
- 13    Ibid s 26(4).
- 14    Ibid s 26(5).
- 15    Ie under ibid s 26.
- 16    Ibid s 26(6)(a).
- 17    Ibid s 26(6)(b).

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#### **458. Regulations as to equipment.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> requiring equipment<sup>3</sup> used by the Serious Organised Crime Agency to satisfy such requirements as to design and performance as may be prescribed by the regulations<sup>4</sup>. The Secretary of State may by regulations make provision: (1) requiring the Agency, when using equipment for the purposes specified in the regulations, to use only the equipment which is specified in the regulations<sup>5</sup>, equipment which is of a description so specified<sup>6</sup>, or equipment which is of a type approved by the Secretary of State in accordance with the regulations<sup>7</sup>; (2) prohibiting the Agency from using equipment of a type approved by the Secretary of State<sup>8</sup> except where the conditions subject to which the approval was given are satisfied<sup>9</sup>, and in accordance with the other terms of that approval<sup>10</sup>; (3) requiring equipment used by the Agency to comply with such conditions as may be specified in the regulations, or as may be approved by the Secretary of State in accordance with the regulations<sup>11</sup>; (4) prohibiting the Agency from using equipment specified in the regulations, or any equipment of a description so specified<sup>12</sup>. Before making such regulations<sup>13</sup> the Secretary of State must consult<sup>14</sup> the Agency<sup>15</sup> and such other persons as he considers appropriate<sup>16</sup>.

1    As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Serious Organised Crime and Police Act 2005 see PARA 448 ante.

2    The power of the Secretary of State to make such regulations is exercisable by statutory instrument, with the regulations being subject to annulment in pursuance of a resolution of either House of Parliament: see ibid s 172(1), (3). The power may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas, and includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate: s 172(2).

3    'Equipment' includes vehicles, and headgear and protective and other clothing: ibid s 27(4).

4    Ibid s 27(1). At the date at which this volume states the law no such regulations had been made.

5    Ibid s 27(2)(a)(i).

6    Ibid s 27(2)(a)(ii).

7    Ibid s 27(2)(a)(iii).

8    Ie equipment of a type as mentioned in ibid s 27(2)(a)(iii): see the text to note 7 supra.

9    Ibid s 27(2)(b)(i).

10   Ibid s 27(2)(b)(ii).

11   Ibid s 27(2)(c).

- 12 Ibid s 27(2)(d).
- 13 Ie under ibid s 27.
- 14 As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.
- 15 Serious Organised Crime and Police Act 2005 s 27(3)(a).
- 16 Ibid s 27(3)(b). For the meaning of 'person' see PARA 110 note 6 ante.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(5) OPERATIONAL MATTERS/(i) In general/459. Liability for acts of seconded staff.

#### **459. Liability for acts of seconded staff.**

The Serious Organised Crime Agency is liable in respect of unlawful conduct of: (1) any constable<sup>1</sup> or other person who has been seconded to the Agency to serve as a member of its staff<sup>2</sup>; and (2) any constable or other person who has been provided<sup>3</sup> for the assistance of the Agency<sup>4</sup>, in the carrying out, or the purported carrying out, of their functions<sup>5</sup> as such persons in the same manner as an employer is liable in respect of any unlawful conduct of his employees in the course of their employment<sup>6</sup>; and in the case of any such unlawful conduct which is a tort, the Agency is accordingly to be treated as a joint tortfeasor<sup>7</sup>.

In a case where an international joint investigation team<sup>8</sup> has been formed under the leadership of a member of the Agency's staff, the above provisions<sup>9</sup> have effect in relation to any member of that team who is not a member of the Agency's staff<sup>10</sup>. Similarly the provisions have effect where a person is carrying out foreign surveillance operations<sup>11</sup> under the Regulation of Investigatory Powers Act 2000<sup>12</sup>.

- 1 As to the office of constable see PARA 101 et seq ante.
- 2 Serious Organised Crime and Police Act 2005 s 28(3)(a). As to the secondment of members of police forces to the Serious Organised Crime Agency see the Police Act 1996 s 97 (as amended); and PARA 428 ante.
- 3 Ie under the Serious Organised Crime and Police Act 2005 s 23 (as amended), s 24 (as amended) or s 25: see PARAS 455-456 ante.
- 4 Ibid s 28(3)(b).
- 5 For the meaning of 'functions' see PARA 439 note 1 ante.
- 6 Serious Organised Crime and Police Act 2005 s 28(1). As to payments in respect of unlawful conduct see PARA 460 post. As to an employer's liability in respect of the unlawful conduct of his employees see TORT vol 45(2) (Reissue) PARA 329.
- 7 Ibid s 28(2). As to joint tortfeasors see TORT vol 45(2) (Reissue) PARA 683.
- 8 'International joint investigation team' means any investigation team formed in accordance with: (1) any framework decision on joint investigation teams adopted under the Treaty on European Union (OJ C191, 29.7.1992, p 1) art 34; (2) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C197, 12.7.2000, p 3) and the Protocol to that Convention established in accordance with the Treaty on European Union (OJ C191, 29.7.1992, p 1) art 34; or (3) any international agreement to which the United Kingdom is a party and which is specified in an order made by the Secretary of State: Serious Organised Crime and Police Act 2005 s 30(5). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 107 note 15 ante. For the meaning of 'United Kingdom' see PARA 102 note 7 ante.
- 9 Ie the provisions of ibid s 28: see the text to notes 1-7 supra.

10 See *ibid* s 30(1), (2)(a). Section 28 has effect in relation to any member of that team who is not a member of the Serious Organised Crime Agency's staff as if any unlawful conduct in the carrying out, or purported carrying out, of his functions as a member of the team were unlawful conduct of a person to whom s 28 applies: s 30(2)(a).

11 *Ie* under the Regulation of Investigatory Powers Act 2000 s 76A (as added): see PARA 498 post.

12 See the Serious Organised Crime and Police Act 2005 s 30(3). In such a case s 28 has effect as if any unlawful conduct of the person in the course of carrying out the surveillance were unlawful conduct of a person to whom s 28 applies: s 30(4)(a).

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#### **460. Payment of amounts in connection with unlawful conduct.**

In respect of any person: (1) who is employed by the Serious Organised Crime Agency<sup>1</sup>; (2) any constable<sup>2</sup> or other person who has been seconded to the Agency to serve as a member of its staff<sup>3</sup>; and (3) any constable or other person who has been provided for the assistance<sup>4</sup> of the Agency<sup>5</sup>, the Agency may, in such cases and to such extent as appear to it to be appropriate, pay:

- 263 (a) any damages or costs awarded against such a person in proceedings for any unlawful conduct of that person<sup>6</sup>;
- 264 (b) any costs (or, in Scotland, expenses) incurred and not recovered by such a person in such proceedings<sup>7</sup>; and
- 265 (c) any sum required in connection with the settlement of a claim that has, or might have, given rise to such proceedings<sup>8</sup>.

Where an international joint investigation team<sup>9</sup> has been formed under the leadership of a member of the Agency's staff, the above provisions<sup>10</sup> have effect as if they applied to every member of the team to whom they would not otherwise<sup>11</sup> apply<sup>12</sup>. Similarly the provisions have effect where a person is carrying out foreign surveillance operations<sup>13</sup> under the Regulation of Investigatory Powers Act 2000<sup>14</sup>.

1 Serious Organised Crime and Police Act 2005 s 29(2)(a). As to the staff of the Serious Organised Crime Agency see PARA 436 ante.

2 As to the office of constable see PARA 101 et seq ante.

3 Serious Organised Crime and Police Act 2005 s 29(2)(b). As to the secondment of members of police forces to the Serious Organised Crime Agency see the Police Act 1996 s 97 (as amended); and PARA 428 ante.

4 *Ie* under the Serious Organised Crime and Police Act 2005 s 23 (as amended), s 24 (as amended) or s 25: see PARAS 455-456 ante.

5 *Ibid* s 29(2)(c).

6 *Ibid* s 29(1)(a). As to the liability of the Serious Organised Crime Agency for the acts of seconded staff or persons provided for its assistance see PARA 459 ante.

7 *Ibid* s 29(1)(b).

8 *Ibid* s 29(1)(c).

9 For the meaning of 'international joint investigation team' see PARA 459 note 8 ante.

10 Ie the Serious Organised Crime and Police Act 2005 s 29: see the text to notes 1-8 supra.

11 Ie apart from ibid s 30(2)(b).

12 Ibid s 30(1), (2)(b). Where a sum is paid by the Serious Organised Crime Agency by virtue of s 30, and the Secretary of State receives under any international agreement a sum by way of reimbursement (in whole or in part) of the sum paid by the Agency, he must pay to the Agency the sum received by him by way of reimbursement: s 30(6).

13 Ie under the Regulation of Investigatory Powers Act 2000 s 76A (as added): see PARA 498 post.

14 Serious Organised Crime and Police Act 2005 s 30(3). In such a case s 29(1) has effect as if it applied to the person carrying out such surveillance: s 30(4)(b). See also note 12 supra.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(5) OPERATIONAL MATTERS/(i) In general/461. Liability of special police forces and law enforcement agencies for unlawful conduct of Agency staff.

#### **461. Liability of special police forces and law enforcement agencies for unlawful conduct of Agency staff.**

The relevant authority<sup>1</sup> is liable in respect of unlawful conduct of members of the staff of the Serious Organised Crime Agency who<sup>2</sup> are provided for the assistance of: (1) a special police force<sup>3</sup>; or (2) a law enforcement agency operating in the United Kingdom<sup>4</sup>, in the carrying out, or the purported carrying out, of their functions<sup>5</sup> as such persons in the same manner as an employer is liable in respect of any unlawful conduct of his employees in the course of their employment<sup>6</sup>. In the case of any such unlawful conduct of those persons which is a tort, the relevant authority is accordingly to be treated as a joint tortfeasor<sup>7</sup>.

In so far as a relevant authority does not already have power to do so it may, in such cases and to such extent as appear to it to be appropriate, pay: (a) any damages or costs awarded against a person in respect of whose unlawful conduct it is so liable in proceedings for any unlawful conduct of that person<sup>8</sup>; (b) any costs (or, in Scotland, expenses) incurred and not recovered by such a person in such proceedings<sup>9</sup>; and (c) any sum required in connection with the settlement of a claim that has, or might have, given rise to such proceedings<sup>10</sup>.

1 'Relevant authority': (1) in relation to a member of the staff of the Serious Organised Crime Agency provided for the assistance of the Ministry of Defence Police, means the Secretary of State; (2) in relation to a member of the staff of the Serious Organised Crime Agency provided for the assistance of the British Transport Police Force, means the British Transport Police Authority; (3) in relation to a member of the staff of the Serious Organised Crime Agency provided for the assistance of the Civil Nuclear Constabulary, means the Civil Nuclear Police Authority; (4) in relation to a member of the staff of the Serious Organised Crime Agency provided for the assistance of the Scottish Crime and Drug Enforcement Agency, means the Director General of that Agency; (5) in relation to a member of the staff of the Serious Organised Crime Agency provided for the assistance of the Commissioners for Revenue and Customs, means the Commissioners; (6) in relation to a member of the staff of the Serious Organised Crime Agency provided for the assistance of the Scottish Administration, means the Scottish Ministers; and (7) in relation to a member of the staff of the Serious Organised Crime Agency provided for the assistance of any other law enforcement agency, means such person as is prescribed in relation to that agency by regulations made by the Secretary of State: Serious Organised Crime and Police Act 2005 s 31(5) (amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, art 6, Schedule para 6). 'Law enforcement agency' has the meaning given by the Serious Organised Crime and Police Act 2005 s 3(4) (see PARA 440 note 6 ante) (subject to the territorial restriction contained in s 30(4)(b) (see the text to note 4 infra): s 31(5). As to the staff of the Serious Organised Crime Agency see PARA 436 ante. As to the Ministry of Defence Police see PARA 120 et seq ante. As to the British Transport Police Force see PARA 129 ante. As to the Civil Nuclear Constabulary see PARA 128 ante. As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Commissioners for Revenue and

Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq. As to the Secretary of State see PARA 107 note 15 ante.

The power of the Secretary of State to make regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: see s 172(1), (3). The power may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas, and includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate: s 172(2). At the date at which this volume states the law no such regulations had been made.

2 le under ibid s 23 (as amended), s 24 (as amended) or s 25: see PARAS 455-456 ante.

3 Ibid s 31(4)(a). For the meaning of 'special police force' see PARA 440 note 5 ante.

4 Ibid s 31(4)(b). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

5 For the meaning of 'functions' see PARA 439 note 1 ante.

6 Serious Organised Crime and Police Act 2005 s 31(1). As to an employer's liability in respect of the unlawful conduct of his employees see TORT vol 45(2) (Reissue) PARA 329.

7 Ibid s 31(2). As to joint tortfeasors see TORT vol 45(2) (Reissue) PARA 683.

8 Ibid s 31(3)(a).

9 Ibid s 31(3)(b).

10 Ibid s 31(3)(c).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(5) OPERATIONAL MATTERS/(ii) Use and Disclosure of Information/462. Use and disclosure of information by the Agency.

## **(ii) Use and Disclosure of Information**

### **462. Use and disclosure of information by the Agency.**

Information obtained by the Serious Organised Crime Agency in connection with the exercise of any of its functions<sup>1</sup> may be used by the Agency in connection with the exercise of any of its other functions<sup>2</sup>. Information obtained by the Agency in connection with the exercise of any of its functions may be disclosed by it if the disclosure is for any permitted purposes<sup>3</sup>. 'Permitted purposes' means the purposes of any of the following:

266 (1) the prevention, detection, investigation or prosecution of criminal offences, whether in the United Kingdom or elsewhere<sup>4</sup>;

267 (2) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom<sup>5</sup>;

268 (3) the exercise of any function conferred on the Agency<sup>6</sup> so far as not falling within head (1) or head (2) above<sup>7</sup>;

269 (4) the exercise of any functions of any intelligence service<sup>8</sup>;

270 (5) the exercise of any functions under Part 2 of the Football Spectators Act 1989<sup>9</sup>;

271 (6) the exercise of any function which appears to the Secretary of State<sup>10</sup> to be a function of a public nature and which he designates by order<sup>11</sup>.

A disclosure under these provisions does not breach any obligation of confidence owed by the person making the disclosure<sup>12</sup>, or any other restriction on the disclosure of information (however imposed)<sup>13</sup>.

1 As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante.

2 Serious Organised Crime and Police Act 2005 s 32.

3 Ibid s 33(1). As to further restrictions on disclosure see PARA 464 post.

4 Ibid s 33(2)(a). For the meanings of 'prevention' and 'detection' of crime see PARA 494 note 6 post; definitions applied by s 42(3). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

5 Ibid s 33(2)(b).

6 Ie by ibid s 2 (see PARA 439 ante), s 3 (see PARA 440 ante) or s 5 (see PARA 442 ante).

7 Ibid s 33(2)(c).

8 Ibid s 33(2)(d). For the meaning of 'intelligence service' see PARA 506 note 3 post; definition applied by s 33(2)(d).

9 Ibid s 33(2)(e). As to the Football Spectators Act 1989 Pt 2 (ss 14-22A) (as amended) see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 530 et seq.

10 As to the Secretary of State see PARA 107 note 15 ante. As to the exercise by the Secretary of State of his powers under the Serious Organised Crime and Police Act 2005 see PARA 448 ante.

11 Ibid s 33(2)(f). The power of the Secretary of State to make an order is exercisable by statutory instrument: s 172(1). The power may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas, and includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate: s 172(2). At the date at which this volume states the law no such order had been made.

12 Ibid s 33(3)(a). As to the law relating to confidentiality see CONFIDENCE AND DATA PROTECTION.

13 Ibid s 33(3)(b). However, nothing in s 33 authorises: (1) a disclosure, in contravention of any provisions of the Data Protection Act 1998 (see CONFIDENCE AND DATA PROTECTION), of personal data which are not exempt from those provisions; (2) a disclosure which is prohibited by the Regulation of Investigatory Powers Act 2000 Pt 1 (ss 1-25) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 506 et seq); or (3) a disclosure in contravention of the Serious Organised Crime and Police Act 2005 s 35(2) (see PARA 464 post): s 33(4).

## UPDATE

### 462 Use and disclosure of information by the Agency

TEXT AND NOTES 1-11--2005 Act s 33(2) amended, s 33(2A)-(2D) added: Serious Crime Act 2007 Sch 8 para 172, Sch 11 para 17.

NOTE 11--As to an order made under the Serious Organised Crime and Police Act 2005 s 33(2)(f) see the Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2008, SI 2008/1908.

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### 463. Disclosure of information to the Agency.

Any person<sup>1</sup> may disclose information to the Serious Organised Crime Agency if the disclosure is made for the purposes of the exercise by the Agency of any of its functions<sup>2</sup>. Such a disclosure does not breach any obligation of confidence owed by the person making the disclosure<sup>3</sup>, or any other restriction on the disclosure of information (however imposed)<sup>4</sup>.

1 For the meaning of 'person' see PARA 110 note 6 ante.

2 Serious Organised Crime and Police Act 2005 s 34(1). Information may not be disclosed under s 34(1) on behalf of the Commissioners for Revenue and Customs unless the disclosure is authorised by the Commissioners or by an authorised officer of theirs: s 34(4). As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante. As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

3 Ibid s 34(2)(a). As to the law relating to confidentiality see CONFIDENCE AND DATA PROTECTION.

4 Ibid s 34(2)(b). However, nothing in s 34 authorises: (1) a disclosure, in contravention of any provisions of the Data Protection Act 1998 (see CONFIDENCE AND DATA PROTECTION), of personal data which are not exempt from those provisions; or (2) a disclosure which is prohibited by the Regulation of Investigatory Powers Act 2000 Pt 1 (ss 1-25) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 506 et seq): Serious Organised Crime and Police Act 2005 s 34(3).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(5) OPERATIONAL MATTERS/(ii) Use and Disclosure of Information/464. Restrictions on further disclosure.

#### **464. Restrictions on further disclosure.**

Information disclosed by the Serious Organised Crime Agency<sup>1</sup> to any person<sup>2</sup> or body must not be further disclosed except for a purpose connected with any function<sup>3</sup> of that person or body for the purposes of which the information was disclosed by the Agency, or otherwise for any permitted purposes<sup>4</sup>, and with the consent of the Agency<sup>5</sup>.

Information disclosed to the Agency under any enactment<sup>6</sup> by the Commissioners for Revenue and Customs<sup>7</sup> or a person acting on their behalf must not be further disclosed except for any permitted purposes<sup>8</sup>, and with the consent of the Commissioners or an authorised officer of Revenue and Customs<sup>9</sup>.

Consent for these purposes<sup>10</sup> may be given in relation to a particular disclosure<sup>11</sup>, or in relation to disclosures made in circumstances specified or described in the consent<sup>12</sup>.

1 Ie under the Serious Organised Crime and Police Act 2005 s 33: see PARA 462 ante.

2 For the meaning of 'person' see PARA 110 note 6 ante.

3 For the meaning of 'functions' see PARA 439 note 1 ante.

4 Serious Organised Crime and Police Act 2005 s 35(1)(a). In s 35, 'permitted purposes' has the meaning given by s 33(2): see PARA 462 ante.

5 Ibid s 35(1)(b).

6 For the meaning of 'enactment' see PARA 431 note 3 ante.

7 As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

8 Serious Organised Crime and Police Act 2005 s 35(2)(a).



9 Ibid s 35(2)(b).

10 le for the purposes of ibid s 35(1) or (2): see the text to notes 1-9 supra.

11 Ibid s 35(3)(a).

12 Ibid s 35(3)(b).

## **UPDATE**

### **464 Restrictions on further disclosure**

TEXT AND NOTES 4, 5--See further 2005 Act s 35(1A) (added by Serious Crime Act 2007 Sch 8 para 173).

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### **(iii) General Duties of Police to the Agency**

#### **465. General duty to pass information to the Agency.**

The chief officer<sup>1</sup> of a police force<sup>2</sup> in Great Britain<sup>3</sup> must keep the Serious Organised Crime Agency informed of any information relating to crime in his police area<sup>4</sup> that appears to him to be likely to be relevant to the exercise by the Agency of any of its functions<sup>5</sup>. The chief officer of a special police force<sup>6</sup> must keep the Agency informed of any information relating to crime that he has become aware of in his capacity as chief officer and appears to him to be likely to be relevant to the exercise by the Agency of any of its functions<sup>7</sup>.

1 For the meaning of 'chief officer' see PARA 442 note 3 ante.

2 For the meaning of 'police force' see PARA 436 note 4 ante.

3 For the meaning of 'Great Britain' see PARA 102 note 7 ante.

4 For the meaning of 'police area' see PARA 136 note 2 ante.

5 Serious Organised Crime and Police Act 2005 s 36(1). The chief constable of the Police Service of Northern Ireland has a corresponding duty in relation to crime in Northern Ireland: s 36(2). As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante.

6 For the meaning of 'special police force' see PARA 440 note 5 ante.

7 Serious Organised Crime and Police Act 2005 s 36(3).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(5) OPERATIONAL MATTERS/(iii) General Duties of Police to the Agency/466. General duty to assist the Agency.

#### **466. General duty to assist the Agency.**

It is the duty of any constable<sup>1</sup>, any officer of Revenue and Customs<sup>2</sup>, and any member of Her Majesty's armed forces or Her Majesty's coastguard<sup>3</sup>, to assist the Serious Organised Crime Agency in the exercise of its functions<sup>4</sup> in relation to serious organised crime<sup>5</sup>.

1 Serious Organised Crime and Police Act 2005 s 37(2)(a). As to the office of constable see PARA 101 et seq ante.

2 Ibid s 37(2)(b). As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

3 Ibid s 37(2)(c).

4 As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante. For the meaning of 'functions' see PARA 439 note 1 ante.

5 Serious Organised Crime and Police Act 2005 s 37(1).

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#### **(iv) Prosecutions**

##### **467. Prosecution of offences investigated by the Agency.**

The Director of Revenue and Customs Prosecutions<sup>1</sup> may institute and conduct criminal proceedings<sup>2</sup> in England and Wales<sup>3</sup> that arise out of a criminal investigation<sup>4</sup> by the Serious Organised Crime Agency<sup>5</sup> relating to a designated offence<sup>6</sup>, and must take over the conduct of criminal proceedings instituted by the Agency in England and Wales in respect of a designated offence<sup>7</sup>. The Director of Revenue and Customs Prosecutions must provide such advice as he thinks appropriate, to such persons<sup>8</sup> as he thinks appropriate, in relation to a criminal investigation by the Agency relating to a designated offence<sup>9</sup>, or criminal proceedings instituted in England and Wales that arise out of such an investigation<sup>10</sup>.

The Director of Public Prosecutions<sup>11</sup> may institute and conduct criminal proceedings in England and Wales that arise out of a criminal investigation by the Agency relating to a non-designated offence<sup>12</sup>, and must take over the conduct of criminal proceedings instituted by the Agency in England and Wales in respect of such an offence<sup>13</sup>. The Director of Public Prosecutions must provide such advice as he thinks appropriate, to such persons as he thinks appropriate, in relation to a criminal investigation by the Agency relating to a non-designated offence<sup>14</sup>, or criminal proceedings instituted in England and Wales that arise out of such an investigation<sup>15</sup>.

1 As to the Director of Revenue and Customs Prosecutions see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1192.

2 A reference to the institution of criminal proceedings is to be construed in accordance with the Prosecution of Offences Act 1985 s 15(2) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1080): Serious Organised Crime and Police Act 2005 s 38(7)(d). The Prosecution of Offences Act 1985 s 23 and s 23A (as added) (power to discontinue proceedings: CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1159) apply (with any necessary modifications) to proceedings conducted by the Director of Revenue and Customs Prosecutions in accordance with the Serious Organised Crime and Police Act 2005 s 38 as they apply to proceedings conducted by the Director of Public Prosecutions: s 38(5).

3 For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante.

4 'Criminal investigation' means any process: (1) for considering whether an offence has been committed; (2) for discovering by whom an offence has been committed; or (3) as a result of which an offence is alleged to have been committed: Serious Organised Crime and Police Act 2005 s 38(7)(a).

5 As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante.

6 Serious Organised Crime and Police Act 2005 s 38(1)(a). An offence is a 'designated offence' if criminal proceedings instituted by the Serious Organised Crime Agency in respect of the offence fall (or, as the case may be, would fall) to be referred to the Director of Revenue and Customs Prosecutions by virtue of directions under s 39(1) (see PARA 468 post): s 38(7)(b). The Police and Criminal Evidence Act 1984 ss 37-37B (as added) (duties of custody officers; guidance etc: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 941) have effect, in relation to a person arrested following a criminal investigation by the Serious Organised Crime Agency relating to a designated offence, as if references to the Director of Public Prosecutions were references to the Director of Revenue and Customs Prosecutions: see the Serious Organised Crime and Police Act 2005 s 40.

7 Ibid s 38(1)(b). A reference to the institution of proceedings by the Serious Organised Crime Agency includes a reference to their institution by the Director General of the Agency or a person authorised by him: s 38(7)(e). As to the Director General see PARA 437 ante. As to the operational responsibilities of the Director General see PARA 454 ante.

8 For the meaning of 'person' see PARA 110 note 6 ante.

9 Serious Organised Crime and Police Act 2005 s 38(2)(a).

10 Ibid s 38(2)(b).

11 As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

12 Serious Organised Crime and Police Act 2005 s 38(3)(a). 'Non-designated offence' means an offence which is not a designated offence (see note 6 supra): s 38(7)(c).

13 Ibid s 38(3)(b). Section 38(3)(b) does not apply where the Director of the Serious Fraud Office has the conduct of the proceedings: s 38(3). As to the Director of the Serious Fraud Office see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1067.

14 Ibid s 38(4)(a).

15 Ibid s 38(4)(b).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(5) OPERATIONAL MATTERS/(iv) Prosecutions/468. Directions as to reference of cases and proceedings to appropriate prosecutor.

#### **468. Directions as to reference of cases and proceedings to appropriate prosecutor.**

The Directors<sup>1</sup> may give directions to the Serious Organised Crime Agency: (1) for enabling the Agency to determine whether cases arising out of criminal investigations by it are to be referred to the Director of Revenue and Customs Prosecutions, or to the Director of Public Prosecutions, in order for him to consider whether to institute<sup>2</sup> proceedings<sup>3</sup>; (2) for enabling the Agency to determine whether criminal proceedings instituted by it are to be referred to the Director of Revenue and Customs Prosecutions, or to the Director of Public Prosecutions, in order for him to take over<sup>4</sup> their conduct<sup>5</sup>; (3) specifying, in relation to any cases or proceedings that are to be so referred to the Director of Revenue and Customs Prosecutions or the Director of Public Prosecutions, the steps to be taken by the Agency in connection with referring them to him<sup>6</sup>.

Such directions may provide for cases or proceedings to be referred to one or other of the Directors by reference to: (a) whether the cases or proceedings relate to an offence falling within a category of offences specified in the directions<sup>7</sup>; or (b) whether any criteria so specified

are satisfied with respect to the cases or proceedings<sup>8</sup>; or (c) such other matters as the Directors think fit<sup>9</sup>. Directions may make different provision for different cases, circumstances or areas<sup>10</sup>; and the Directors may from time to time revise any directions they give<sup>11</sup>.

The Directors must publish in such manner as they think fit any directions they give<sup>12</sup> and any revisions made to such directions<sup>13</sup>; and they must give a copy of any such directions or revisions to the Agency<sup>14</sup>. Reports by each of the Directors to the Attorney General<sup>15</sup> must set out any directions they give<sup>16</sup>, and any revisions made to such directions<sup>17</sup>, in the year to which the report relates<sup>18</sup>.

If there is a failure to comply with directions in relation to the reference of any matter to one of the Directors, neither the reference<sup>19</sup>, nor anything subsequently done in connection with the matter<sup>20</sup>, is invalid by reason of anything in the directions or in the provisions<sup>21</sup> relating to the prosecution of offences investigated by the Agency<sup>22</sup>.

1 'The Directors' means the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions, acting jointly: Serious Organised Crime and Police Act 2005 s 39(1). As to the Director of Revenue and Customs Prosecutions see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1192. As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

2 le in accordance with *ibid* s 38(1)(a) or s 38(3)(a): see PARA 467 ante.

3 *Ibid* s 39(1)(a).

4 le in accordance with *ibid* s 38(1)(b) or s 38(3)(b): see PARA 467 ante.

5 *Ibid* s 39(1)(b).

6 *Ibid* s 39(1)(c).

7 *Ibid* s 39(2)(a).

8 *Ibid* s 39(2)(b).

9 *Ibid* s 39(2)(c).

10 *Ibid* s 39(7).

11 *Ibid* s 39(3).

12 *Ibid* s 39(4)(a).

13 *Ibid* s 39(4)(b).

14 *Ibid* s 39(4).

15 le reports under the Prosecution of Offences Act 1985 s 9 (report to Attorney General by Director of Public Prosecutions: CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1073), and reports under the Commissioners for Revenue and Customs Act 2005 Sch 3 para 6 (report to Attorney General by Director of Revenue and Customs Prosecutions: CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1075): Serious Organised Crime and Police Act 2005 s 39(6).

16 *Ibid* s 39(5)(a).

17 *Ibid* s 39(5)(b).

18 *Ibid* s 39(5).

19 *Ibid* s 39(8)(a).

20 *Ibid* s 39(8)(b).

21 le *ibid* s 38: see PARA 467 ante.

22 *Ibid* s 39(8)(b).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(5) OPERATIONAL MATTERS/(v) Assault or Obstruction in connection with Joint Investigation Teams/469. Assault or obstruction of members of joint investigation teams.

## **(v) Assault or Obstruction in connection with Joint Investigation Teams**

### **469. Assault or obstruction of members of joint investigation teams.**

Where an international joint investigation team<sup>1</sup> has been formed under the leadership of a member of the Serious Organised Crime Agency's staff<sup>2</sup>, a person commits an offence: (1) if he assaults a member of the team who is carrying out his functions<sup>3</sup> as a member of the team<sup>4</sup>; (2) if he resists or wilfully obstructs a member of the team who is carrying out his functions as a member of that team<sup>5</sup>.

1 'International joint investigation team' means any investigation team formed in accordance with: (1) any framework decision on joint investigation teams adopted under the Treaty on European Union (OJ C191, 29.7.1992, p 1) art 34; (2) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C197, 12.7.2000, p 3) and the Protocol to that Convention established in accordance with the Treaty on European Union (OJ C191, 29.7.1992, p 1) art 34; or (3) any international agreement to which the United Kingdom is a party and which is specified in an order made by the Secretary of State: Serious Organised Crime and Police Act 2005 s 57(6). The power make such an order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: see s 172(1), (3). The power may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas, and includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate: s 172(2). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 107 note 15 ante. For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

2 Ibid s 57(1). As to the staff of the Serious Organised Crime Agency see PARA 436 ante. As to the functions of the Serious Organised Crime Agency see PARAS 439-440 ante.

3 For the meaning of 'functions' see PARA 439 note 1 ante.

4 Serious Organised Crime and Police Act 2005 s 57(2). A person guilty of such an offence is liable, on summary conviction, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both: s 57(4). As to the application of s 57(4) to Scotland see s 57(7); and as to its application to Northern Ireland see s 57(8). As to the standard scale see PARA 127 note 2 ante.

5 Ibid s 57(3). A person guilty of such an offence is liable, on summary conviction, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 3 on the standard scale, or to both: s 57(5). As to the application of s 57(5) to Scotland see s 57(7); and as to its application to Northern Ireland see s 57(8).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(6) SPECIAL POWERS OF DESIGNATED STAFF/(i) Designations/470. Designation of staff as persons having powers.

## **(6) SPECIAL POWERS OF DESIGNATED STAFF**

### **(i) Designations**

#### **470. Designation of staff as persons having powers.**

The Director General of the Serious Organised Crime Agency<sup>1</sup> may designate a member of the Agency's staff<sup>2</sup> as one or more of the following: (1) a person having the powers of a constable<sup>3</sup>; (2) a person having the customs powers of an officer of Revenue and Customs<sup>4</sup>; (3) a person having the powers of an immigration officer<sup>5</sup>. A designation may be made subject to any limitations specified in the designation (whether as to the powers exercisable by virtue of it, the purposes for which they are exercisable, or otherwise)<sup>6</sup>, and has effect either for a period so specified or without limit of time<sup>7</sup>. A member of the Agency's staff may be designated as a person having the powers mentioned in any of heads (1) to (3) above whether or not he already has (for any reason) any powers falling within any of those heads<sup>8</sup>, or he had any such powers before becoming a member of the Agency's staff<sup>9</sup>. However, a person may not be designated as a person having any of those powers unless the Director General is satisfied that that person is capable of effectively exercising the powers that would be exercisable by virtue of the designation<sup>10</sup>, has received adequate training in respect of the exercise of those powers<sup>11</sup>, and is otherwise a suitable person to exercise those powers<sup>12</sup>.

Where an employee of the Agency, before becoming such an employee, held an office by virtue of which he had any powers falling within head (1), (2) or (3) above<sup>13</sup> and has not resigned that office<sup>14</sup>, that office is to be treated as suspended so long as he remains in the Agency's employment, and revives if (and only if) on ceasing to be so employed he returns to service as the holder of that office<sup>15</sup>.

The Director General may, to such extent as he may specify, delegate his functions<sup>16</sup> of designation to an employee of the Agency at the prescribed level<sup>17</sup>. The Director General may at any time modify or withdraw a designation by giving a notice to that effect to the designated person<sup>18</sup>. An employee of the Agency by whom the power to make designations is exercisable<sup>19</sup> may at any time modify or withdraw a relevant designation by giving a notice to that effect to the designated person<sup>20</sup>.

1 As to the Director General see PARA 437 ante. As to the operational responsibilities of the Director General see PARA 454 ante.

2 As to the staff of the Agency see PARA 436 ante. As to the exercise of powers by a designated person see s 50; and PARA 474 post. As to offences against a designated person see s 51; and PARA 475 post. 'Designated person' means a person for the time being designated under the Serious Organised Crime and Police Act 2005 s 43: s 54(1).

3 Ibid s 43(1)(a). References to the powers of a constable are to be read in accordance with ss 46, 47 (see PARA 471 post): s 43(7). As to the office of constable see PARA 101 et seq ante.

4 Ibid s 43(1)(b). References to the customs powers of an officer of Revenue and Customs are to be read in accordance with s 48 (see PARA 472 post): s 43(7).

5 Ibid s 43(1)(c). References to the powers of an immigration officer are to be read in accordance with s 49 (see PARA 473 post): s 43(7).

6 Ibid s 43(2)(a). Section 43(2) applies subject to any modification or withdrawal of the designation under s 45 (see the text to notes 18-20 infra): s 43(3).

7 Ibid s 43(2)(b). See also note 6 supra.

8 Ibid s 43(4)(a).

9 Ibid s 43(4)(b).

10 Ibid s 43(5)(a).

11 Ibid s 43(5)(b).

12 Ibid s 43(5)(c).

13 Ibid s 43(6)(a).

14 Ibid s 43(6)(b).

15 Ibid s 43(6).

16 Ie under ibid s 43.

17 Ibid s 44(1). 'At the prescribed level' means employed in a grade or on a pay scale not lower than that specified in an order made by the Secretary of State: s 44(2). Any power of the Secretary of State to make such an order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: see s 172(1), (3). Any such power may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas, and includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate: s 172(2). As to the order that has been made see the Serious Organised Crime and Police Act 2005 (Delegation under section 43) Order 2006, SI 2006/100. As to the Secretary of State see PARA 107 note 15 ante.

18 Serious Organised Crime and Police Act 2005 s 45(1).

19 Ie under ibid s 44: see the text and notes 16-17 supra.

20 Ibid s 45(2). For these purposes 'a relevant designation', in relation to such an employee, means a designation of a kind that the employee is authorised to make by virtue of s 44 (see the text and notes 16-17 supra): s 45(3).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(6) SPECIAL POWERS OF DESIGNATED STAFF/(ii) Powers Exercisable/471. Person having powers of a constable.

## **(ii) Powers Exercisable**

### **471. Person having powers of a constable.**

A member of the Serious Organised Crime Agency's staff<sup>1</sup> who is for the time being designated<sup>2</sup> as a person having the powers of a constable<sup>3</sup> has all the powers and privileges of a constable<sup>4</sup>. Those powers and privileges are exercisable by the designated person<sup>5</sup> throughout England and Wales and the adjacent United Kingdom waters<sup>6</sup>, and in Scotland or Northern Ireland and the adjacent United Kingdom waters<sup>7</sup>. However, if any of those powers and privileges, when exercisable by a constable, are subject to any territorial restrictions on their exercise, they are similarly subject to those restrictions when exercised by the designated person<sup>8</sup>; and if any of those powers and privileges, when exercisable by a constable, are exercisable elsewhere than in the United Kingdom or the adjacent United Kingdom waters, they are similarly exercisable by the designated person<sup>9</sup>. The designated person also has any powers exercisable by virtue of any enactment under which a constable may be authorised by warrant to exercise any power in relation to any matter<sup>10</sup>.

These provisions<sup>11</sup> have effect subject to any limitation specified<sup>12</sup> in the designation<sup>13</sup>.

1 As to the staff of the Agency see PARA 436 ante.

2 Ie under the Serious Organised Crime and Police Act 2005 s 43: see PARA 470 ante.

3 Ibid s 46(1).

4 Ibid s 46(2). References in s 46 to the powers and privileges of a constable are references to the powers and privileges of a constable whether under any enactment or otherwise: s 46(9). As to the office of constable see PARA 101 et seq ante. For the meaning of 'enactment' see PARA 431 note 3 ante.

A member of the Serious Organised Crime Agency's staff who is for the time being designated under s 43 as a person having the powers of a constable is not, by virtue of s 46(2), to be treated as being in police service for

the purposes of the following enactments: (1) the Trade Union and Labour Relations (Consolidation) Act 1992 s 280 (person in police service excluded from definitions of 'worker' and 'employee': see EMPLOYMENT vol 40 (2009) PARA 847); (2) the Employment Rights Act 1996 s 200 (certain provisions of the Act not to apply to persons in police service: see EMPLOYMENT vol 39 (2009) PARA 141); (3) the Trade Union and Labour Relations (Northern Ireland) Order 1995, SI 1995/1980 (NI 12), art 145; and (4) the Employment Rights (Northern Ireland) Order 1996, SI 1996/1919 (NI 16), art 243: Serious Organised Crime and Police Act 2005 s 53(1), (2).

5 For the meaning of 'designated person' see PARA 470 note 2 ante. Any reference to the exercise of powers by virtue of a designation under *ibid* s 43 is, in a case where any limitations were imposed under s 43(2) (see PARA 470 ante), a reference to their exercise in conformity with those limitations: s 54(2).

6 *Ibid* s 46(3)(a). 'United Kingdom waters' means the sea and other waters within the seaward limits of the United Kingdom's territorial sea: s 54(1). For the meaning of 'United Kingdom' see PARA 102 note 7 ante. For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante. As to the United Kingdom's territorial sea see WATER AND WATERWAYS vol 100 (2009) PARA 31.

7 *Ibid* s 46(3)(b). As to the exercise of the powers and privileges in Scotland and Northern Ireland see s 47.

8 *Ibid* s 46(4).

9 *Ibid* s 46(5).

10 *Ibid* s 46(6), (7). Any such enactment has effect, for the purpose of enabling the designated person to be authorised to exercise the power in relation to any such matter, as if he were a constable: s 46(7).

11 *Ie* *ibid* s 46(2)-(7): see the text to notes 4-10 *supra*.

12 *Ie* under *ibid* s 43(2): see PARA 470 ante.

13 *Ibid* s 46(8).

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#### **472. Person having customs powers.**

A member of the Serious Organised Crime Agency's staff<sup>1</sup> who is for the time being designated<sup>2</sup> as a person having the customs powers of an officer of Revenue and Customs<sup>3</sup> has, in relation to any customs matter<sup>4</sup>, the same powers as an officer of Revenue and Customs would have<sup>5</sup>. The designated person<sup>6</sup> also has any powers exercisable by virtue of any enactment under which an officer of Revenue and Customs may be authorised by warrant to exercise any power in relation to any customs matter<sup>7</sup>. Where any power is exercisable by an officer of Revenue and Customs both in relation to a customs matter<sup>8</sup> and in relation to any other matter<sup>9</sup>, it is exercisable by the designated person only in relation to the customs matter<sup>10</sup>.

These provisions<sup>11</sup> have effect subject to any limitation specified<sup>12</sup> in the designation<sup>13</sup>.

1 As to the staff of the Agency see PARA 436 ante.

2 *Ie* under the Serious Organised Crime and Police Act 2005 s 43: see PARA 470 ante.

3 *Ibid* s 48(1).

4 'Customs matter' means any matter other than: (1) a matter to which the Commissioners for Revenue and Customs Act 2005 s 7 applies (former Inland Revenue matters); or (2) any tax or duty not mentioned in the Commissioners for Revenue and Customs Act 2005 Sch 1 (which lists such matters): Serious Organised Crime and Police Act 2005 s 48(7).



5 Ibid s 48(2). Any reference to the exercise of powers by virtue of a designation under s 43 is, in a case where any limitations were imposed under s 43(2) (see PARA 470 ante), a reference to their exercise in conformity with those limitations: s 54(2).

6 For the meaning of 'designated person' see PARA 470 note 2 ante.

7 Serious Organised Crime and Police Act 2005 s 48(3), (4). Any such enactment has effect, for the purpose of enabling the designated person to be authorised to exercise the power in relation to any such matter, as if he were an officer of Revenue and Customs: s 48(4). For the meaning of 'enactment' see PARA 431 note 3 ante.

8 Ibid s 48(5)(a).

9 Ibid s 48(5)(b).

10 Ibid s 48(5).

11 Ie ibid s 48(2)-(5): see the text to notes 4-10 supra.

12 Ie under ibid s 43(2): see PARA 470 ante.

13 Ibid s 48(6).

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#### **473. Person having powers of an immigration officer.**

A member of the Serious Organised Crime Agency's staff<sup>1</sup> who is for the time being designated<sup>2</sup> as a person having the powers of an immigration officer<sup>3</sup> has, in relation to any matter in relation to which powers are exercisable by an immigration officer<sup>4</sup>, the same powers as such an officer would have<sup>5</sup>. The designated person<sup>6</sup> also has any powers exercisable by virtue of any enactment under which an immigration officer may be authorised by warrant to exercise any power in relation to any matter<sup>7</sup>.

These provisions<sup>8</sup> have effect subject to any limitation specified<sup>9</sup> in the designation<sup>10</sup>.

1 As to the staff of the Agency see PARA 436 ante.

2 Ie under the Serious Organised Crime and Police Act 2005 s 43: see PARA 470 ante.

3 Ibid s 49(1).

4 'Immigration officer' means a person who is an immigration officer within the meaning of the Immigration Act 1971 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 83 et seq): Serious Organised Crime and Police Act 2005 s 49(6).

5 Ibid s 49(2). Any reference to the exercise of powers by virtue of a designation under s 43 is, in a case where any limitations were imposed under s 43(2) (see PARA 470 ante), a reference to their exercise in conformity with those limitations: s 54(2).

6 For the meaning of 'designated person' see PARA 470 note 2 ante.

7 Serious Organised Crime and Police Act 2005 s 49(3), (4). Any such enactment has effect, for the purpose of enabling the designated person to be authorised to exercise the power in relation to any such matter, as if he were an immigration officer: s 49(4).

8 Ie ibid s 49(2)-(4): see the text to notes 4-7 supra.

9 Ie under ibid s 43(2): see PARA 470 ante.

10 Ibid s 49(5).

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### **(iii) Exercise of Powers**

#### **474. Exercise of powers.**

If a designated person<sup>1</sup> exercises any power in relation to another person<sup>2</sup> in reliance on his designation<sup>3</sup>, or purports to do so<sup>4</sup>, he must produce evidence of his designation to the other person if requested to do so<sup>5</sup>. However, a failure to comply with this requirement does not make the exercise of the power invalid<sup>6</sup>.

For the purpose of determining liability for the unlawful conduct of members of the Serious Organised Crime Agency's staff<sup>7</sup>, any conduct by a designated person in reliance, or purported reliance, on his designation is to be taken to be: (1) if he is employed by the Agency, conduct in the course of his employment<sup>8</sup>; or (2) if he is a constable or other person who has been seconded to the Agency as a member of staff<sup>9</sup>, conduct falling within the provisions<sup>10</sup> relating to such persons<sup>11</sup>. In the case of any unlawful conduct within head (1) or head (2) above which is a tort, the Agency is accordingly to be treated as a joint tortfeasor<sup>12</sup>.

1 For the meaning of 'designated person' see PARA 470 note 2 ante.

2 For the meaning of 'person' see PARA 110 note 6 ante.

3 Serious Organised Crime and Police Act 2005 s 50(1)(a). Any reference to the exercise of powers by virtue of a designation under s 43 (see PARA 470 ante) is, in a case where any limitations were imposed under s 43(2) (see PARA 470 ante), a reference to their exercise in conformity with those limitations: s 54(2).

4 Ibid s 50(1)(b).

5 Ibid s 50(1).

6 Ibid s 50(2).

7 As to the staff of the Agency see PARA 436 ante.

8 Serious Organised Crime and Police Act 2005 s 50(3)(a).

9 I.e. a person to whom ibid s 28 applies by virtue of s 28(3)(a): see PARA 459 ante.

10 I.e. conduct falling within ibid s 28(1): see PARA 459 ante.

11 Ibid s 50(3)(b). As to payments by the Serious Organised Crime Agency in respect of the unlawful conduct of its employees and persons seconded to it see s 29; and PARA 460 ante.

12 Ibid s 50(4). As to joint tortfeasors see TORT vol 45(2) (Reissue) PARA 683.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/4. SERIOUS ORGANISED CRIME AGENCY/(6) SPECIAL POWERS OF DESIGNATED STAFF/(iii) Exercise of Powers/475. Assaults, obstruction or deception in connection with designations.

#### **475. Assaults, obstruction or deception in connection with designations.**

A person commits an offence:

- 272 (1) if he assaults a designated person<sup>1</sup> acting in the exercise of a relevant power<sup>2</sup>, or a person who is assisting a designated person in the exercise of such a power<sup>3</sup>;
- 273 (2) if he resists or wilfully obstructs a designated person acting in the exercise of a relevant power<sup>4</sup>, or a person who is assisting a designated person in the exercise of such a power<sup>5</sup>;
- 274 (3) if, with intent to deceive: (a) he impersonates a designated person<sup>6</sup>; (b) he makes any statement or does any act calculated falsely to suggest that he is a designated person<sup>7</sup>; or (c) he makes any statement or does any act calculated falsely to suggest that he has powers as a designated person that exceed the powers he actually has<sup>8</sup>.

1 For the meaning of 'designated person' see PARA 470 note 2 ante.

2 Serious Organised Crime and Police Act 2005 s 51(1)(a). 'Relevant power', in relation to a designated person, means a power or privilege exercisable by that person by virtue of designation under s 43 (see PARA 470 ante): s 51(6). Any reference to the exercise of powers by virtue of a designation under s 43 is, in a case where any limitations were imposed under s 43(2) (see PARA 470 ante), a reference to their exercise in conformity with those limitations: s 54(2).

A person guilty of an offence under s 51(1) is liable, on summary conviction, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both: s 51(4). As to the standard scale see PARA 127 note 2 ante.

3 Ibid s 51(1)(b). As to the penalty for such an offence see note 2 supra.

4 Ibid s 51(2)(a). A person guilty of an offence under s 51(2) is liable, on summary conviction, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 3 on the standard scale, or to both: s 51(5).

5 Ibid s 51(2)(b). As to the penalty for such an offence see note 4 supra.

6 Ibid s 51(3)(a). A person guilty of an offence under s 51(3) is liable, on summary conviction, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both: s 51(4).

7 Ibid s 51(3)(b). As to the penalty for such an offence see note 6 supra.

8 Ibid s 51(3)(c). As to the penalty for such an offence see note 6 supra.

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#### **476. Modification of enactments.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for any enactment<sup>3</sup> (or description of enactments) to apply in relation to designated persons<sup>4</sup>, or the exercise of powers<sup>5</sup> by such persons<sup>6</sup>, with such modifications as he considers necessary or expedient<sup>7</sup>. In particular<sup>8</sup>, such an order may include provision for or in connection with: (1) extending to such persons any exemption or protection afforded by an enactment to any other description of persons<sup>9</sup>; (2) providing for the disclosure of information to, or the doing of other things in relation to, such persons under any enactment<sup>10</sup>; (3) conferring on the Director General of the Serious Organised Crime Agency<sup>11</sup> functions<sup>12</sup> exercisable in relation to such persons<sup>13</sup>.

Before exercising the power to make an order in relation to an enactment which (expressly or otherwise) confers any function on the Commissioners for Revenue and Customs, or an officer of Revenue and Customs, the Secretary of State must consult the Commissioners<sup>14</sup>; and before exercising the power in relation to an enactment which extends to Scotland, the Secretary of State must consult the Scottish Ministers<sup>15</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 Any power of the Secretary of State to make such an order is exercisable by statutory instrument: Serious Organised Crime and Police Act 2005 s 172(1). No such order may be made by the Secretary of State (whether alone or with other provisions) unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament: s 172(5)(b). Any such order

may make different provision for different cases or descriptions of case or different purposes or areas, and such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate: s 172(2).

3 For the meaning of 'enactment' see PARA 431 note 3 ante.

4 Serious Organised Crime and Police Act 2005 s 52(1)(a). In s 52, any reference to designated persons includes a reference to any description of such persons: s 52(4). For the meaning of 'designated person' see PARA 470 note 2 ante.

5 See under *ibid* Pt 1 Ch 2 (ss 43-54).

6 *Ibid* s 52(1)(b).

7 *Ibid* s 52(1). As to the order that has been made see the Serious Organised Crime and Police Act 2005 (Application and Modification of Certain Enactments to Designated Staff of SOCA) Order 2006, SI 2006/987. The power conferred by the Serious Organised Crime and Police Act 2005 s 52(1) is exercisable by the Scottish Ministers (rather than by the Secretary of State) where the provision to be made is within the legislative competence of the Scottish Parliament: s 52(7). As to the Scottish Ministers and the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 *Ibid* s 52(2) does not affect the generality of s 52(1) (see the text and notes 1-7 *supra*): s 52(3).

9 *Ibid* s 52(2)(a).

10 *Ibid* s 52(2)(b).

11 As to the Director General see PARA 437 ante. As to the operational responsibilities of the Director General see PARA 454 ante.

12 For the meaning of 'functions' see PARA 439 note 1 ante.

13 Serious Organised Crime and Police Act 2005 s 52(2)(c).

14 *Ibid* s 52(5). As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq. As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2010) PARA 627.

15 *Ibid* s 52(6).

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## **5. THE PRESERVATION OF THE QUEEN'S PEACE**

### **(1) POWERS, DUTIES AND PRIVILEGES GENERALLY**

#### **477. Jurisdiction.**

A member of a police force<sup>1</sup> has all the powers and privileges of a constable<sup>2</sup> throughout England and Wales and the adjacent United Kingdom waters<sup>3</sup>.

A warrant issued in England, Wales or Northern Ireland for the arrest of a person charged with an offence may (without any endorsement) be executed in Scotland by any constable of any police force of the country of issue or of the country of execution as well as by any other persons within the directions in the warrant<sup>4</sup>. A warrant issued in Scotland or Northern Ireland for the arrest of a person charged with an offence may (without any endorsement) be executed in England or Wales by any constable of any police force of the country of issue or of the country of execution as well as by any other persons within the directions in the warrant<sup>5</sup>. A warrant issued in England or Wales or Scotland for the arrest of a person charged with an offence may (without any endorsement) be executed in Northern Ireland by any constable of any police force of the country of issue or of the country of execution as well as by any other persons within the directions in the warrant<sup>6</sup>.

1 For the meaning of 'police force' see PARA 102 note 11 ante.

2 For the meaning of 'powers' see PARA 102 note 5 ante. As to the office of constable see PARA 101 et seq ante.

3 Police Act 1996 s 30(1). For the meanings of 'England' and 'Wales' see PARA 102 note 6 ante. For the meanings of 'United Kingdom' and 'United Kingdom waters' see PARA 102 note 7 ante. As to the jurisdiction of special constables see PARA 109 ante. As to the jurisdiction of constables provided for cross-border aid of one police force by another see PARA 429 ante. A member of the British Transport Police Force who is for the time being required by virtue of s 23 or s 24 (see PARA 231 ante) to serve with a police force maintained by a police authority has all the powers and privileges of a member of that police force: s 30(3A) (added by the Anti-terrorism, Crime and Security Act 2001 s 101, Sch 7 paras 20, 24). As to the British Transport Police Force see PARA 129 ante. For the meaning of 'police authority' see PARA 139 note 1 ante.

4 Criminal Justice and Public Order Act 1994 s 136(1).

5 Ibid s 136(2).

6 Ibid s 136(3). As to the power to execute warrants see s 136(4)-(8) (as amended); as to cross-border powers of arrest see ss 137, 138 (both as amended); as to search powers available on arrest see s 139 (as amended); as to reciprocal powers of arrest see s 140 (as amended); and see CRIMINAL LAW, EVIDENCE AND PROCEDURE VOL 11(2) (2006 Reissue) PARAS 921, 928-929, 937. As to European and international arrest warrants see the Extradition Act 2003; and EXTRADITION.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(1) POWERS, DUTIES AND PRIVILEGES GENERALLY/478. General functions of constables.

#### **478. General functions of constables.**

The primary function of the constable<sup>1</sup> remains, as in the seventeenth century, the preservation of the Queen's peace<sup>2</sup>. From this general function stems a number of particular duties additional to those conferred by statute and including those mentioned below.

The first duty of a constable is always to prevent the commission of a crime<sup>3</sup>. If a constable reasonably apprehends that the action of any person may result in a breach of the peace it is his duty to prevent that action<sup>4</sup>. In certain circumstances the police may have a duty with regard to disclosure of information regarding convicted criminals in order to protect the community<sup>5</sup>. It is a constable's general duty to protect life and property<sup>6</sup>. The general function of controlling traffic on the roads is derived from this duty<sup>7</sup>.

However, a constable is himself subject to the law, and he cannot claim immunity from it by reason only that he is acting in pursuance of his duty; indeed a constable who flouted the law (whether civil or criminal) could scarcely be said to be acting in the execution of his duty as such<sup>8</sup>. Whether or not the conduct of a constable is inconsistent with his acting in the execution of his duty is very much a matter of degree; for example, touching a person on the shoulder for the purpose of attracting his attention may be an assault in law, but such a trivial interference with a citizen's liberty would not be sufficient to take a constable out of the course of his duties<sup>9</sup>. While, in principle, the police should not act as agents provocateurs<sup>10</sup>, the nature of a suspected offence or the circumstances in a particular area may, in a particular case, justify action of this nature or some degree of participation in the commission of an offence<sup>11</sup>. A police officer who goes too far may himself be prosecuted for the crime he has committed or for inciting another to commit a crime, or he may be disciplined<sup>12</sup>.

Although it is the duty of the police to obtain all possible information regarding criminal offences which have been committed<sup>13</sup>, they have in general no power to compel any person to disclose facts within his knowledge or to answer questions put to him<sup>14</sup>.

Every member of a police force<sup>15</sup> must carry out all lawful orders and at all times punctually and promptly perform all appointed duties and attend to all matters within the scope of his office as a constable<sup>16</sup>.

A warrant of arrest, warrant of commitment, warrant of detention, warrant of distress or search warrant issued by a justice of the peace may be executed anywhere in England and Wales by any constable acting within his police area<sup>17</sup>.

As a public officer, a constable who wilfully and culpably neglects to perform any duty which he is bound either by common law or statute to perform commits a common law offence of misconduct in public office unless the discharge of the duty would be attended with greater danger than a man of ordinary firmness and authority may be expected to encounter<sup>18</sup>. If a police constable exercises his powers as a public officer causing loss to the claimant where he either intends to injure the claimant or knows that he has no power to do the act complained of and that the act will probably injure the claimant he may be liable for the independent tort of misfeasance in public office<sup>19</sup>.

An order directing the disclosure of the whereabouts of a child for the purposes of family proceedings<sup>20</sup> can be directed at the police, but should be made only in exceptional circumstances<sup>21</sup>.

1 As to the office of constable see PARA 101 et seq ante.

2 See *Glasbrook Bros Ltd v Glamorgan County Council* [1925] AC 270 at 277, HL, per Viscount Cave LC; *Rice v Connolly* [1966] 2 QB 414 at 419, [1966] 2 All ER 649 at 651 per Lord Parker CJ. Cf the statement of the general functions of a Scottish constable in the Police (Scotland) Act 1967 s 17(1). As to the general conduct of police officers see the code of conduct contained in the Police (Conduct) Regulations 2004, SI 2004/645, reg 3, Sch 1; and PARA 246 ante. The code states the primary duties of those who hold the office of constable to be the protection of life and property, the preservation of the Queen's peace, and the prevention and detection of criminal offences: see Sch 1 note (a).

3 The prevention of crime was stated to be the first duty of a constable in the Instructions to Constables of 1839: see Critchley *History of Police in England and Wales (900-1966)* p 52. In the absence of a special relationship, police investigating a crime owe no duty of care to potential victims or witnesses: see *Hill v Chief Constable of North Yorkshire* [1989] AC 53, [1988] 2 All ER 238, HL; applied in *Ancell v McDermott* [1993] 4 All ER 355, [1993] RTR 235, CA (police owed no duty of care to give warnings to protect road users from hazards of which they have become aware); and see *Alexandrou v Oxford* [1993] 4 All ER 328, CA (no duty of care owed to respond to burglar alarm). See also *Brooks v Metropolitan Police Comr* [2005] UKHL 24, [2005] 2 All ER 489, [2005] 1 WLR 1495, in which the House of Lords approved *Hill v Chief Constable of North Yorkshire* supra but expressed some reservations about the full width of the reasons for the decision in that case. Where a person has been effectively deprived of his liberty and police officers decide to release him, they have a duty to exercise reasonable care to have regard to reasonably foreseeable consequences of his being released: *Wilson v Chief Constable, Lothian and Borders Constabulary* 1989 SLT 97, Ct of Sess. There is no general duty on the police to issue public declarations of innocence in respect of persons questioned in connection with an alleged

crime: see *R (on the application of C) v Chief Constable of 'A' Police* [2006] EWHC 2352 (Admin), [2006] All ER (D) 124 (Sep).

4 *Duncan v Jones* [1936] 1 KB 218 (attempt to hold an outdoor meeting where a previous similar meeting had caused a disturbance); and see *Beatty v Gillbanks* (1882) 9 QBD 308; *Wise v Dunning* [1902] 1 KB 167; *Thomas v Sawkins* [1935] 2 KB 249. A police officer's duty to prevent a breach of the peace arises only when the officer considers that the breach of the peace is imminent; and he has no power to take any action short of arrest to prevent a breach of the peace which is not sufficiently imminent to justify arrest: *R (on the application of Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55, [2007] 2 All ER 529, [2007] 2 WLR 46. See also *Foulkes v Chief Constable of the Merseyside Police* [1998] 3 All ER 705, [1998] 2 FLR 789, CA. As to breach of the peace see *R v Howell (Error)* [1982] QB 416, [1981] 3 All ER 383; *Steel v United Kingdom* (1998) 28 EHRR 603, [1998] Crim LR 893, 5 BHRC 339, ECtHR; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 930.

5 See the Police Act 1997 Pt V (ss 112-127) (as amended) (certificates of criminal records etc: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 711 et seq); *R (on the application of X) v Chief Constable of the West Midlands Police* [2004] EWCA Civ 1068, [2005] 1 All ER 610; *R (on the application of L) v Metropolitan Police Commr* [2007] EWCA Civ 168, [2007] All ER (D) 19 (Mar). See also *Hellewell v Chief Constable of Derbyshire* [1995] 4 All ER 473, [1995] 1 WLR 804; *R v Chief Constable of North Wales Police, ex p Thorpe* [1999] QB 396, sub nom *R v Chief Constable of North Wales Police, ex p AB* [1998] 3 All ER 310, CA (disclosure of the identities of former paedophile offenders to members of the public to take place only when there was a pressing need to do so and where the police had acted in a sensible, pragmatic manner and had endeavoured to obtain as much information relevant to the decision as was possible in the circumstances). As to the duty of confidentiality on police see further CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 471. See, however, *Elliott v Chief Constable of Wiltshire* (1996) Times, 5 December (officer's misconduct in passing information to plaintiff's employer about convictions which were either spent, or had never existed, amounted to misfeasance in public office); and see the text to notes 18, 19 *infra*.

6 *Haynes v Harwood* [1935] 1 KB 146, CA, where a constable claimed damages for injuries received while attempting to stop a runaway horse negligently left unattended. It was held that, in view of the general duty of the police to intervene to prevent injury to life or property, the constable's injuries were the natural and probable consequence of the defendants' negligence, and the maxim *volenti non fit injuria* afforded no defence. However, it has been held that police officers have no special entitlement to damages for nervous shock arising out of events which they are attending in their professional capacity: *White v Chief Constable of South Yorkshire Police* [1999] 2 AC 455, [1999] 1 All ER 1, HL. See also *French v Chief Constable of Sussex Police* [2006] EWCA Civ 312, (2006) Times, 5 April, [2006] All ER (D) 407 (Mar); and the cases cited in note 2 *supra*.

7 See PARA 524 *post*.

8 *Morris v Beardmore* [1981] AC 446, [1980] 2 All ER 753, HL.

9 *Donnelly v Jackman* [1970] 1 All ER 987, [1970] 1 WLR 562. Cf *Davis v Lisle* [1936] 2 KB 434, [1936] 2 All ER 213; *Kenlin v Gardiner* [1967] 2 QB 510, [1966] 3 All ER 931; *Lindley v Rutter* [1981] QB 128, [1980] 3 WLR 660. See also *Beard v Wood* [1980] Crim LR 384, [1980] RTR 454; *Mepstead v DPP* [1996] COD 13, (1995) 160 JP 475; *Collins v Wilcock* [1984] 3 All ER 374, [1984] 1 WLR 1172.

10 *Brannan v Peek* [1948] 1 KB 68 at 72, [1947] 2 All ER 572 at 573-574 per Lord Goddard CJ; *Browning v JWH Watson (Rochester) Ltd* [1953] 2 All ER 775 at 779, [1953] 1 WLR 1172 at 1177 per Lord Goddard CJ.

11 *Sneddon v Stevenson* [1967] 2 All ER 1277, [1967] 1 WLR 1051. A police officer who merely partakes in an offence for the purpose of obtaining evidence is not an accomplice whose evidence requires corroboration: *Sneddon v Stevenson* *supra* at 1280 and 1056 per Lord Parker CJ. See also *R v Mealey*, *R v Sheridan* (1974) 60 Cr App Rep 59, CA.

12 *R v Sang* [1980] AC 402 at 422, [1979] 2 All ER 46 at 62, CA, per Roskill LJ; *affd* [1980] AC 402, [1979] 2 All ER 1222, HL.

13 As to the use of informers by the police see *R v Birtles* [1969] 2 All ER 1131n, [1969] 1 WLR 1047, CA. As to a petition under corresponding Scottish legislation see *Petition of Friel* 1981 SLT 113, Court of Session, where Lord Maxwell held that an order would not be made under the Supreme Court Act 1981 s 33 and the County Courts Act 1984 s 52 for the disclosure by the police of the identity of informers to enable a person against whom they were believed to have given false and malicious information to sue them, since the public interest requires that citizens should be able to assist the police secure in the knowledge that such information will not be disclosed.

14 An exception to this rule is to be found in the Official Secrets Act 1920 s 6 (as substituted) under which it is an offence to fail on demand to give to a chief officer of police information relating to an offence under the Official Secrets Act 1911 s 1, or to fail to attend at a reasonable time and place to furnish such information: see

CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 482. Under the Road Traffic Act 1988 ss 164, 165, 168 (all as amended), ss 169, 171, 172 (as substituted), certain persons may be required to furnish, for example, their own name and address or that of the owner or driver of a vehicle: see PARA 524 post. Failure without reasonable excuse to disclose certain information about acts of terrorism as soon as reasonably practicable is an offence under the Terrorism Act 2000 s 19: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 394. Where the general rule applies a refusal to answer questions does not of itself amount to the obstruction of a constable in the execution of his duty: *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649. See, however, the circumstances when adverse inferences may be drawn from silence (Criminal Justice and Public Order Act 1994 ss 34-38 (all as amended)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1550 et seq.

15 For the meaning of 'police force' see PARA 102 note 11 ante.

16 See the Police Regulations 2003, SI 2003/527, reg 20; and PARA 396 ante.

17 See the Magistrates' Courts Act 1980 s 125(2) (amended by the Access to Justice Act 1999 s 95(1)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 920. See also the Police Act 1996 s 30 (as amended); and PARAS 109, 477 ante. For the meaning of 'police area' see PARA 136 note 2 ante. As to powers of arrest and of search and as to protection of constables executing warrants see PARAS 482, 523 post. As to search for and removal of persons suffering from mental disorder see the Mental Health Act 1983 s 135 (as amended); and MENTAL HEALTH vol 30(2) (Reissue) PARAS 549-550.

18 See Stephen's Digest of Criminal Law (Indictable Offences) (9th Edn) (1950) 114; *R v Wyatt* (1705) 1 Salk 380 (where a constable failed to make a return to a warrant); *R v Dytham* [1979] QB 722, [1979] 3 All ER 641, CA (where a constable on duty ignored a brawl in which a man was killed). See also *Kirkham v Chief Constable of the Greater Manchester Police Force* [1990] 2 QB 283, [1990] 3 All ER 246, CA (police under duty to apprise prison authorities of the suicidal tendencies of remand prisoner). As to misconduct in public office see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 536.

19 See eg *Ashley v Chief Constable of Sussex Police* [2006] EWCA Civ 1085, [2006] All ER (D) 406 (Jul). As to misfeasance in public office generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 188; TORT vol 45(2) (Reissue) PARA 844.

20 See for the purposes of the Family Law Act 1986 s 33 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 840.

21 See *S v S (Chief Constable of West Yorkshire Police intervening)* [1999] 1 All ER 281, [1998] 1 WLR 1716, CA. As to the duties of police generally in relation to the protection of children see further CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 594-600.

## UPDATE

### 478 General functions of constables

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864.

NOTE 13--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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### 479. Duties of care owed by police.



The persons to whom the police owe a duty of care, and the extent of such duty, have not been exhaustively defined, but the scope of such a duty has been considered in a number of modern cases. It has been held that: (1) a duty of care may arise when a police informant has entrusted confidential information to the police, the release of which is likely to endanger his safety<sup>1</sup>; (2) a duty of care may be owed to road users where police officers have taken control of a hazardous road traffic situation<sup>2</sup>; (3) an officer may be under a duty of care to comply with specific or acknowledged police duties where failure to do so would expose a fellow officer to an unnecessary risk of injury<sup>3</sup>; (4) there is a duty of care to a fellow police officer where a negligent act has been committed by another police officer in circumstances where he should have realised that injury could result<sup>4</sup>; (5) there is a duty of care to protect a prisoner from suicide where the risk of suicide is known or ought to be known<sup>5</sup>; (6) there is a duty of care to prevent damage by third parties to property in police custody<sup>6</sup>; (7) the police owe a duty of care to an arrested person to protect him from injury by their own acts or those of third parties<sup>7</sup>; (8) police authorities<sup>8</sup> owe a duty to the public at large to take reasonable care to see that police officers given firearms are competent and suitable<sup>9</sup>; (9) the police owe a duty of care to a prisoner, when handing him over to the prison service, to inform that service accurately of the date of his arrest<sup>10</sup>; (10) a duty of care may be owed to protect a witness<sup>11</sup>.

However, it has been held that: (a) the police do not owe a general duty of care to protect an appropriate adult (that is, a person attending police interviews to represent the interests of a person being interviewed who is a child or is believed to be suffering from mental disorder), from psychological harm arising from the nature of the crime being investigated<sup>12</sup>; (b) the police do not generally owe a duty of care to individual members of the public for their activities in the investigation and suppression of crime<sup>13</sup>.

1 See *Swinney v Chief Constable of Northumbria Police (No 2)* (1999) Times, 25 May, 11 Admin LR 811 (albeit that in this case reasonable care had been taken). As to the duty of confidentiality on police see further CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 471.

2 See *Gibson v Chief Constable of Strathclyde Police* (1999) Times, 11 May, Ct of Sess. See also *Norman E Brown & Sons Ltd v A-G* [1996] 2 NZLR 70, Auckland HC.

3 See *Costello v Chief Constable of Northumbria Police* [1999] 1 All ER 550, [1999] ICR 752, CA; para 105 ante; and NEGLIGENCE vol 78 (2010) PARA 10.

4 See *Schofield v Chief Constable of West Yorkshire* [1999] ICR 193, 43 BMLR 28, CA; and NEGLIGENCE vol 78 (2010) PARA 12.

5 See *Reeves v Metropolitan Police Comr* [1999] 2 QB 169, [1998] 2 All ER 381, CA (on appeal [2000] 1 AC 360, [1999] 3 All ER 897, HL); *Orange v Chief Constable of West Yorkshire Police* [2001] EWCA Civ 611, [2002] QB 347, [2001] All ER (D) 07 (May). See also *Kirkham v Chief Constable of Greater Manchester Police* [1990] QB 283, [1990] 3 All ER 246, CA; and NEGLIGENCE vol 78 (2010) PARAS 8, 70, 75. This duty of care is part of the more general duty of care owed by a custodian to his prisoner: see PRISONS vol 36(2) (Reissue) PARA 565.

6 See *Sutcliffe v Chief Constable of West Yorkshire* [1996] RTR 86, (1995) 159 JP 770, CA (where, however, the damage was not reasonably foreseeable and reasonable precautions could not have prevented it, so the police were not in breach of the duty of care). As to property in police possession generally see PARAS 520-522 post.

7 *Vellino v Chief Constable of Greater Manchester Police* [2001] EWCA Civ 1249, [2002] 3 All ER 78, [2002] 1 WLR 218 (where, however, it was held that this duty does not extend to a duty to take care that the arrested person is not injured in a foreseeable attempt to escape police custody).

8 As to police authorities see PARA 139 ante.

9 *Hartwell v A-G of the British Virgin Islands* [2004] UKPC 12, [2004] All ER (D) 372 (Feb), sub nom *A-G of the British Virgin Islands v Hartwell* [2004] 1 WLR 1273 (where it was held that no distinction is to be drawn between personal injuries inflicted in the course of police duties and personal injuries inflicted by a police officer using a police gun for his own ends).

10 *Clarke v Chief Constable of Northamptonshire Police* (1999) Times, 14 June. Any misinformation by the police leading to the prisoner being detained beyond the proper term will make the police liable in damages to the prisoner for his unlawful detention.

11 *Van Colle v Chief Constable of Hertfordshire Police* [2007] EWCA Civ 325, [2007] All ER (D) 190 (Apr).

12 See *Leach v Chief Constable of Gloucestershire Constabulary* [1999] 1 All ER 215, [1999] 1 WLR 1421, CA.

13 *Cowan v Chief Constable of Avon and Somerset Constabulary* [2001] EWCA Civ 1699, [2002] HLR 830, [2001] All ER (D) 204 (Nov).

## UPDATE

### 479 Duties of care owed by police

TEXT AND NOTES--See also Corporate Manslaughter and Corporate Homicide Act 2007; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38A.

TEXT AND NOTE 11--*Van Colle*, cited, reversed sub nom *Van Colle v Chief Constable of the Hertfordshire Police*; *Smith v Chief Constable of Sussex Police* [2008] UKHL 50, [2008] 3 All ER 977.

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### 480. Right of the police to the assistance of the public.

Although every member of the public is under a moral or social duty to assist the police<sup>1</sup>, a person is under no general legal duty to answer questions put to him<sup>2</sup>. However, in case of necessity, a constable<sup>3</sup> acting in the execution of his duty is entitled to demand the assistance of private persons and it is an offence to refuse it<sup>4</sup>. There are also offences of failure to disclose knowledge or suspicion of financial assistance being provided for terrorism<sup>5</sup> and failure to disclose knowledge or suspicion of money-laundering<sup>6</sup>.

It is an offence to assault, resist or wilfully obstruct a constable in the execution of his duty, or a person assisting a constable in the execution of his duty<sup>7</sup>.

1 A claim in contract by an informer against a police force to recover agreed remuneration for the delivery of information may fail on public interest grounds: see *Carnduff v Rock* [2001] EWCA Civ 680, [2001] 1 WLR 1786, [2001] All ER (D) 151 (May). Cf *Savage v Chief Constable of the Hampshire Constabulary* [1997] 2 All ER 631, [1997] 1 WLR 1061, CA.

2 *Rice v Connolly* [1966] 2 QB 414 at 419, [1966] 2 All ER 649 at 652 per Lord Parker CJ. See however para 478 note 14 ante.

3 As to the office of constable see PARA 101 et seq ante.

4 *R v Brown* (1841) Car & M 314; and see *R v Waugh* (1976) Times, 1 October; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 738.

5 See the Terrorism Act 2000 s 19; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 394.

6 See the Proceeds of Crime Act 2002 ss 330-332; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 797-799.

7 See the Police Act 1996 s 89 (as amended); and PARA 481 post.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(1) POWERS, DUTIES AND PRIVILEGES GENERALLY/481. Criminal offences in respect of the police.

#### **481. Criminal offences in respect of the police.**

There are a number of criminal offences relating to conduct which might adversely affect police efficiency.

It is an offence for any person to assault a constable<sup>1</sup> in the execution of his duty, or a person assisting a constable in the execution of his duty<sup>2</sup>. It is also an offence for any person to resist or wilfully obstruct a constable in the execution of his duty, or a person assisting a constable in the execution of his duty<sup>3</sup>.

In general, a person who for reward does not disclose information material to the prosecution or conviction of a person for a relevant offence commits an offence<sup>4</sup>. It is an offence to cause wasteful employment of the police by knowingly making certain false reports<sup>5</sup>.

It is an offence for any person who, with intent to deceive<sup>6</sup>, impersonates a member of a police force<sup>7</sup> or a special constable<sup>8</sup>, or makes any statement or does any act calculated falsely to suggest that he is such a member or constable<sup>9</sup>. It is also an offence if any person who, not being a constable, wears any article of police uniform<sup>10</sup> in circumstances where it gives him an appearance so nearly resembling that of a member of a police force as to be calculated to deceive<sup>11</sup>. Any person who, not being a member of a police force or a special constable, has in his possession any article of police uniform is, unless he proves that he obtained possession of that article lawfully and has possession of it for a lawful purpose, guilty of an offence<sup>12</sup>. There are similar offences in relation to the Ministry of Defence Police<sup>13</sup>.

It is an offence for any person to cause, or attempt to cause, or to do any act calculated to cause, disaffection amongst the members of any police force<sup>14</sup>, or to induce or attempt to induce, or to do any act calculated to induce, any member of a police force to withhold his services<sup>15</sup>. There are similar offences in relation to the Ministry of Defence Police<sup>16</sup>.

1 As to the office of constable see PARA 101 et seq ante. The Police Act 1996 s 89 (as amended) also applies to a constable who is a member of a police force maintained in Scotland or Northern Ireland when he is executing a warrant, or otherwise acting in England or Wales, by virtue of any enactment conferring powers on him in England and Wales: see s 89(3). For the meaning of 'enactment' see PARA 102 note 5 ante. For the purposes of s 89 (as amended) any person who is carrying out surveillance in England and Wales under the Regulation of Investigatory Powers Act 2000 s 76A (as added) (see PARA 498 post) is to be treated as if he were acting as a constable in the execution of his duty: Crime (International Co-operation) Act 2003 s 84(1). The references in the Police Act 1996 s 89 to a constable in the execution of his duty include references to a member of the Civil Nuclear Constabulary (see PARA 128 ante): see the Energy Act 2004 s 68(1); and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1531.

2 See the Police Act 1996 s 89(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 735. The penalty for such offence is, on summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both: s 89(1). As to the standard scale see PARA 127 note 2 ante. As to who constitutes a person assisting a constable in the execution of his duty see s 89(4)-(6) (added by the Police Reform Act 2002 s 104(1); and the Police Act 1996 s 89(4) amended by the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 68, 81, Sch 17 Pt 2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 735. As to the use of firearms to resist arrest see the Firearms Act 1968 s 17 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 676.

3 See the Police Act 1996 s 89(2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 735. The penalty for such offence is, on summary conviction, imprisonment for a term not exceeding one month or a fine not exceeding level 3 on the standard scale, or both: s 89(2). As from a day to be appointed the term

of imprisonment is increased to one not exceeding 51 weeks: see s 89(2) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 47). At the date at which this volume states the law no such day had been appointed. See also note 1 *supra*.

4 See the Criminal Law Act 1967 s 5(1) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 739.

5 See *ibid* s 5(2) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 739.

6 As to intent to deceive see *Re London and Globe Finance Corpn Ltd* [1903] 1 Ch 728; *Welham v DPP* [1961] AC 103, [1960] 1 All ER 805, HL; *R v Charles* [1977] AC 177, sub nom *Metropolitan Police Comr v Charles* [1977] Crim LR 615, HL; *R v Lambie* [1982] AC 449, [1981] 2 All ER 776, HL.

7 'Member of a police force' includes a member of the staff of the National Policing Improvement Agency who is a constable: Police Act 1996 s 90(4)(ab) (added by the Police and Justice Act 2006 s 1(3), Sch 1 paras 61, 70). For the meaning of 'police force' see PARA 102 note 11 *ante*. The Police Act 1996 s 90 (as amended) has effect as if the references to a member of a police force included references to a member of the Civil Nuclear Constabulary: see the Energy Act 2004 s 68(2); and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1531. As to the National Policing Improvement Agency see PARA 223 *ante*.

8 'Special constable' means a special constable appointed for a police area: Police Act 1996 s 90(4)(b). As to special constables see PARA 108 *et seq ante*. For the meaning of 'police area' see PARA 136 note 2 *ante*.

9 See *ibid* s 90(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 397. The penalty for such offence is, on summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both: s 90(1).

10 'Article of police uniform' means any article of uniform or any distinctive badge or mark or document of identification usually issued to members of police forces or special constables, or anything having the appearance of such an article, badge, mark or document: *ibid* s 90(4)(a).

11 See *ibid* s 90(2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 397. The penalty for such offence is, on summary conviction, a fine not exceeding level 3 on the standard scale: s 90(2). See also *Turner v Shearer* [1973] 1 All ER 397, [1972] 1 WLR 1387.

12 See the Police Act 1996 s 90(3); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 397. The penalty for such offence is, on summary conviction, a fine not exceeding level 1 on the standard scale: s 90(3).

13 See the Ministry of Defence Police Act 1987 s 5; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 397. As to the Ministry of Defence Police see PARA 120 *et seq ante*.

14 The Police Act 1996 s 91 applies in the case of special constables appointed for a police area, members of the staff of the National Policing Improvement Agency who are constables, members of the Civil Nuclear Constabulary, and members of the British Transport Police Force, as it applies in the case of members of a police force: s 91(2) (substituted by the Energy Act 2004 s 68(3); and amended by the Police and Justice Act 2006 Sch 1 paras 61, 71).

15 See the Police Act 1996 s 91(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 377. The penalty for such offence is: (1) on summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both (s 91(1)(a)); (2) on conviction on indictment, imprisonment for a term not exceeding two years or a fine, or both (s 91(1)(b)). As to the statutory maximum see PARA 127 note 6 *ante*. It should be noted that whereas it is only a potential misconduct for an individual member of a police force to withhold his services, anyone organising such action would be criminally liable. Liability under s 91(1) for any behaviour is in addition to any civil liability for that behaviour: see s 91(3) (added by the Police and Justice Act 2006 s 52, Sch 14 para 30).

16 See the Ministry of Defence Police Act 1987 s 6; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 377.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(1) POWERS, DUTIES AND PRIVILEGES GENERALLY/482. Police powers of entry, search, seizure and arrest.

## **482. Police powers of entry, search, seizure and arrest.**

A constable<sup>1</sup> has the same powers of arrest as a member of the public, together with certain additional statutory powers<sup>2</sup>. He has no general power to search a person who has been arrested unless he believes the arrested person may present a danger to himself and others, and he may search to the extent that is reasonably required for the purpose of discovering anything the arrested person might use to assist him to escape from lawful custody, or which might be evidence relating to an offence<sup>3</sup>.

A constable has no general right of entry into private property except to prevent a breach of the peace and to prevent the commission of an offence which he believes to be imminent or likely to be committed<sup>4</sup>. He has, however, certain statutory powers of entry, and may be entitled to enter and search premises where a person was at the time of or immediately before his arrest<sup>5</sup>. Where he is on private property on the invitation or with the permission, express or implied, of the lawful occupier or someone acting on his behalf, he must leave if so asked and is not entitled to remain merely for the purpose of making inquiries which cannot result in an arrest<sup>6</sup>.

An occupier of premises is under no duty to make them safe for a constable, or to warn him of any danger, if the constable is on the premises notwithstanding that he has no right of entry, invitation or permission<sup>7</sup>. If he has entered in exercise of a right of entry, he is treated for the purposes of the occupier's liability towards him as if he had entered with the permission of the occupier, whose duty is to take such care to see that he will be as reasonably safe as in all the circumstances is reasonable<sup>8</sup>. However, it cannot be assumed that in such a case the occupier is bound to take special precautions for the benefit of a constable who comes unexpectedly upon his premises, possibly during the night<sup>9</sup>.

A constable has certain statutory powers to enter and search premises without a warrant<sup>10</sup>. These powers apart, in the absence of consent he has only a right to search premises in pursuance of a search warrant issued by a justice of the peace.

Where a constable is lawfully on any premises, whether in pursuance of a search warrant or otherwise, he may seize goods which he finds in a person's possession or custody if he believes, on reasonable grounds, that the person in question stole them or received them knowing them to be stolen<sup>11</sup>. However, this appears to be the application to the case of stolen goods of a wider proposition, the underlying principle of which is that where a constable has reasonable grounds for believing that the person concerned has committed or is implicated in a crime, the constable may seize an article held by that person which the constable reasonably believes to be the fruit of a crime, or an instrument used in a crime or otherwise material evidence of it<sup>12</sup>. There are limitations on power of seizure<sup>13</sup> and special provisions for computerised information<sup>14</sup>. The police must not retain what they seize for longer than is reasonably necessary to complete their investigations or preserve it for evidence<sup>15</sup>, but, if their beliefs prove mistaken, the lawfulness of their conduct must be judged by their beliefs at the time and not in the light of subsequent events<sup>16</sup>.

1 As to the office of constable see PARA 101 et seq ante.

2 See the Police and Criminal Evidence Act 1984 Pt III (ss 24-33) (as amended); *Brazil v Chief Constable of Surrey* [1983] 3 All ER 537, 77 Cr App Rep 237, DC; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 924 et seq. A constable's powers to stop, search and arrest are governed primarily by the Police and Criminal Evidence Act 1984 although other legislation provides specific powers: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 910 et seq. A constable formally arresting a person should inform him of the fact and grounds of the arrest or detention: see s 28; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 931. Unless this information is given, the arrest is not lawful: *Edwards v DPP* [1995] RTR 287, (1993) 97 Cr App Rep 301.

3 See the Police and Criminal Evidence Act 1984 s 32(1), (2), (3); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 936.

4 See *McLeod v Metropolitan Police Comr* [1994] 4 All ER 553, CA.

5 See the Police and Criminal Evidence Act 1984 s 32(2)(b); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 936. All the rules of common law under which a constable has power to enter premises without a warrant are abolished, except powers of entry to deal with or prevent a breach of the peace: see s 17(5), (6). As to the statutory powers of search and entry see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 860 et seq.

6 *Davis v Lisle* [1936] 2 KB 434, [1936] 2 All ER 213; *Robson v Hallett* [1967] 2 QB 939, [1967] 2 All ER 407. A constable on premises at the request of an occupier may remain for a reasonable time to investigate the complaint, despite a request to leave by a co-occupier: *R v Thornley* (1980) 72 Cr App Rep 302.

7 See *Great Central Rly Co v Bates* [1921] 3 KB 578, DC.

8 See the Occupiers' Liability Act 1957 s 2; and NEGLIGENCE vol 78 (2010) PARA 32. As to the duty of occupiers to persons other than visitors see the Occupiers' Liability Act 1984 s 1; and NEGLIGENCE vol 78 (2010) PARA 40.

9 See *Great Central Rly Co v Bates* [1921] 3 KB 578 at 582, DC, per Atkin LJ.

10 See eg the Police and Criminal Evidence Act 1984 ss 17(1), 18 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 884-885); the Terrorism Act 2000 s 43 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 426); and the Police Reform Act 2002 s 59 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 972).

11 *Chic Fashions (West Wales) Ltd v Jones* [1968] 2 QB 299, [1968] 1 All ER 229, CA.

12 See *McLorie v Oxford* [1982] QB 1290, [1982] 3 All ER 480.

13 See the Police and Criminal Evidence Act 1984 s 19; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 886. See also *Cowan v Metropolitan Police Comr* [2000] 1 All ER 504, sub nom *Cowan v Condon* [2000] 1 WLR 254, CA.

14 See the Police and Criminal Evidence Act 1984 s 20; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 887.

15 See *ibid* s 22; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 889. As to duties on police in respect of seized articles see s 21; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 888.

16 The principle may also extend to the case where the refusal of the person concerned to hand over the article is quite unreasonable: *Ghani v Jones* [1970] 1 QB 693 at 709, [1969] 3 All ER 1700 at 1705, CA, per Lord Denning MR. The police may, in a particular case, be entitled to seize documents which are evidence of a crime notwithstanding that the person concerned is not implicated: *Frank Truman Export Ltd v Metropolitan Police Comr* [1977] QB 952, [1977] 3 All ER 431; *Malone v Metropolitan Police Comr* [1980] QB 49, [1979] 1 All ER 256, CA. As to a constable obtaining access to excluded material or special procedure material see the Police and Criminal Evidence Act s 9, Sch 1; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 874 et seq. See also *Reynolds v Metropolitan Police Comr* [1985] QB 881, [1984] 3 All ER 649, CA. The police are under a duty to disclose, in civil proceedings under a subpoena duces tecum, documents seized by them in criminal proceedings, subject to the owner of the documents' rights to challenge the subpoena: *Marcel v Metropolitan Police Comr* [1992] Ch 225, [1992] 1 All ER 72, CA. As to a constable's right to seek an injunction 'freezing' a bank account containing the proceeds of crime see *West Mercia Constabulary v Wagener* [1981] 3 All ER 378, [1982] 1 WLR 127; *Chief Constable of Kent v V* [1983] QB 34, [1982] 3 All ER 36, CA (distinguished in *Chief Constable of Hampshire v A* [1985] QB 132, [1984] 2 All ER 385, CA; and applied in *Chief Constable of Leicestershire v M* [1988] 3 All ER 1015, [1988] 1 WLR 20).

## UPDATE

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NOTE 2--See also *Wood v DPP* [2008] EWHC 1056 (Admin), [2008] All ER (D) 162 (May), (2008) Times, 23 May, DC.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(2) INTERFERENCE WITH PROPERTY OR WIRELESS TELEGRAPHY UNDER THE POLICE ACT 1997/483. Authorisations to interfere with property or wireless telegraphy under the Police Act 1997.

## **(2) INTERFERENCE WITH PROPERTY OR WIRELESS TELEGRAPHY UNDER THE**

### **483. Authorisations to interfere with property or wireless telegraphy under the Police Act 1997.**

No entry on or interference with property or with wireless telegraphy<sup>1</sup> is unlawful if it is authorised by an authorisation having effect under Part III of the Police Act 1997<sup>2</sup>. Where specified conditions are met, an authorising officer<sup>3</sup> may authorise<sup>4</sup>: (1) the taking of such action, in respect of such property in the relevant area<sup>5</sup>, as he may specify<sup>6</sup>; (2) the taking of action for maintaining or retrieving any equipment, apparatus or device the placing or use of which in the relevant area has been authorised under statutory powers<sup>7</sup>, in respect of property outside the relevant area, as he may specify<sup>8</sup>; or (3) the taking of such action in the relevant area as he may specify, in respect of wireless telegraphy<sup>9</sup>. The specified conditions are that the authorising officer believes both that it is necessary for the action specified to be taken for the purpose of preventing or detecting serious crime<sup>10</sup>, and that the taking of the action is proportionate to what the action seeks to achieve<sup>11</sup>. The matters to be taken into account in considering whether these requirements are satisfied in the case of any authorisation include whether what it is thought necessary to achieve by the authorised action could reasonably be achieved by other means<sup>12</sup>.

The powers conferred by, or by virtue of these provisions, are additional to any other powers which a person has as a constable either at common law or under or by virtue of any other enactment and are not to be taken to affect any of those other powers<sup>13</sup>.

Provision is made for authorisations to be given in urgent cases in the absence of an authorising officer<sup>14</sup>.

1 'Wireless telegraphy' means the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for the purpose, of electromagnetic energy of a frequency not exceeding 3,000 gigahertz that: (1) serves for conveying messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus; or (2) is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of objects: see the Wireless Telegraphy Act 2006 s 116(1), (2); and TELECOMMUNICATIONS AND BROADCASTING (definition applied by the Police Act 1997 s 108(1) (amended by the Wireless Telegraphy Act 2006 s 123, Sch 7 para 19)).

Wireless telegraphy is 'interfered with' if the fulfilment of the purposes of the telegraphy is prejudiced (either generally or in part and, in particular, as respects all, or as respects any, of the recipients or intended recipients of a message, sound or visual image intended to be conveyed by the telegraphy) by an emission or reflection of electromagnetic energy: see the Wireless Telegraphy Act 2006 s 115(1), (3); and TELECOMMUNICATIONS AND BROADCASTING (definition applied by the Police Act 1997 s 108(1) (as so amended)).

2 Ibid s 92. The authorisation referred to in the text is one under Pt III (ss 91-108) (as amended): see s 92. As to the power of the Secretary of State to issue codes of practice relating to the exercise and performance of the powers and duties under Pt III (as amended) see the Regulation of Investigatory Powers Act 2000 ss 71, 72; and PARA 492 post.

3 'Authorising officer' means: (1) the chief constable of a police force maintained under the Police Act 1996 s 2 (see PARA 136 ante); (2) the Metropolitan Police Commissioner or an assistant metropolitan police commissioner; (3) the City of London Police Commissioner; (4) the chief constable of a police force maintained under or by virtue of the Police (Scotland) Act 1967 s 1 (as amended); (5) the chief constable or a deputy chief constable of the Police Service of Northern Ireland; (6) the chief constable of the Ministry of Defence Police; (7) the Provost Marshal of the Royal Navy Police; (8) the Provost Marshal of the Royal Military Police; (9) the Provost

Marshal of the Royal Air Force Police; (10) the chief constable of the British Transport Police; (11) the Director General of the Serious Organised Crime Agency, or any member of the staff of that Agency who is designated for these purposes by that Director General; (12) any officer of revenue and customs designated by the Commissioners for Revenue and Customs for these purposes; (13) the chairman of the Office of Fair Trading; and (14) the Director General of the Scottish Crime and Drug Enforcement Agency: Police Act 1997 ss 93(5), 108(1) (s 93(5) amended by the Police (Northern Ireland) Act 2000 s 78(1), Sch 6 para 20(1), (2)(b); the Regulation of Investigatory Powers Act 2000 s 75(1), (6)(a), (c); the Enterprise Act 2002 s 200(1), (2)(d); the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 94, 97(1), (4); the Police, Public Order and Criminal Justice (Scotland) Act 2006 s 101, Sch 6 para 6(1), (2)(b); the Armed Forces Act 2006 s 378(1), Sch 16 para 146(1), (3); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). For the meaning of 'police force' see PARA 102 note 11 ante. As to the Metropolitan Police Commissioner see PARA 183 ante. As to the City of London Police Commissioner see PARA 187 ante. As to Ministry of Defence Police see PARA 120 et seq ante. As to the British Transport Police see PARA 129 ante. As to the Serious Organised Crime Agency see PARA 430 et seq ante. As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq. As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

4 Police Act 1997 s 93(1). As to the form, duration and notification of authorisations see PARA 484 post. As to authorisations requiring approval see PARA 485 post. As to the quashing and cancellation of authorisations see PARA 487 post.

5 'Relevant area' means: (1) in relation to a person within note 3 heads (1)-(3) supra, the area in England and Wales for which his police force is maintained; (2) in relation to a person within note 3 head (4) supra, the area in Scotland for which his police force is maintained; (3) in relation to a person within note 3 head (5) supra, Northern Ireland; (4) in relation to a person within note 3 head (6) supra, means any place where, under the Ministry of Defence Police Act 1987 s 2 (see PARA 120 ante), the members of the Ministry of Defence Police have the powers and privileges of a constable; (5) in relation to a person within note 3 head (10) supra, means the United Kingdom; (6) in relation to the person within note 3 head (14) means Scotland: Police Act 1997 s 93(6) (amended by the Regulation of Investigatory Powers Act 2000 ss 75(1), (7), 82(2), Sch 5; the Serious Organised Crime and Police Act 2005 Sch 4 paras 94, 97(1), (5), Sch 17 Pt 2; and the Police, Public Order and Criminal Justice (Scotland) Act 2006 Sch 6 para 6(1), (2)(c)). In each case, 'relevant area' also includes the adjacent United Kingdom waters: Police Act 1997 s 93(6). For the meaning of 'United Kingdom waters' see PARA 102 note 7 ante; definition applied by s 108(1). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

For the purposes of any authorisation by a person within note 3 head (7), (8) or (9) supra, property is in the relevant area or action in respect of wireless telegraphy is taken in the relevant area if, as the case may be: (a) the property is owned, occupied, in the possession of or being used by a person subject to service discipline; or (b) the action is taken in relation to the use of wireless telegraphy by such a person: s 93(6A) (s 93(6A), (6B) added by the Regulation of Investigatory Powers Act 2000 s 75(1), (8)). For these purposes a person is subject to service discipline: (i) in relation to the Royal Navy Regulating Branch, if he is subject to the Naval Discipline Act 1957 or is a civilian to whom Pts I and II of that Act for the time being apply by virtue of s 118 (see ARMED FORCES vol 2(2) (Reissue) PARA 311); (ii) in relation to the Royal Military Police, if he is subject to military law or is a civilian to whom the Army Act 1955 Pt II for the time being applies by virtue of s 209 (see ARMED FORCES vol 2(2) (Reissue) PARA 311); and (iii) in relation to the Royal Air Force Police, if he is subject to air force law or is a civilian to whom the Air Force Act 1955 Pt II for the time being applies by virtue of s 209 (see ARMED FORCES vol 2(2) (Reissue) PARA 311): Police Act 1997 s 93(6B) (as so added).

6 Ibid s 93(1)(a).

7 Ie under ibid Pt III (as amended) or the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended) (see PARA 489 et seq post) or under any enactment contained in or made under an Act of the Scottish Parliament which makes provision equivalent to that made by the Regulation of Investigatory Powers Act 2000 Pt II (as amended): Police Act 1997 s 93(1A) (added by the Regulation of Investigatory Powers Act 2000 s 75(1), (3)).

8 Police Act 1997 s 93(1)(ab) (added by the Regulation of Investigatory Powers Act 2000 s 75(1), (2)).

9 Police Act 1997 s 93(1)(b). Section 93(1) (as amended) applies where the authorising officer is a member of the staff of the Serious Organised Crime Agency, officer of revenue and customs or an officer of the Office of Fair Trading with the omission of the words 'in the relevant area' in each place where they occur, and of s 93(1)(ab) (as added) (see the text and note 8 supra): s 93(1B) (added by the Regulation of Investigatory Powers Act 2000 s 75(1), (3); and amended by the Enterprise Act 2002 s 200(1), (2)(a); the Serious Organised Crime and Police Act 2005 Sch 4 paras 94, 97(1), (2); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50).

10 Police Act 1997 s 93(2)(a) (amended by the Regulation of Investigatory Powers Act 2000 s 75(1), (4)(a)). The Police Act 1997 s 93(2) (as amended) applies where the authorising officer is the chief constable or the deputy chief constable of the Police Service of Northern Ireland as if the reference in s 93(2)(a) (as amended) to preventing or detecting serious crime included a reference to the interests of national security: s 93(2A) (s 93(2A) added by the Regulation of Investigatory Powers Act 2000 s 75(1), (5); and amended by the Police



(Northern Ireland) Act 2000 Sch 6 para 20(1), (2)(b)). Where the authorising officer is the chairman of the Office of Fair Trading, the only purpose falling within the Police Act 1997 s 93(2)(a) (as amended) is the purpose of preventing or detecting an offence under the Enterprise Act 2002 s 188 (see COMPETITION vol 18 (2009) PARA 319); Police Act 1997 s 93(2AA) (added by the Enterprise Act 2002 s 200(1), (2)(b)).

For these purposes, conduct which constitutes one or more offences is regarded as serious crime if, and only if:

- 18 (1) it involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose (Police Act 1997 s 93(4)(a)); or
- 19 (2) the offence or one of the offences is an offence for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more (s 93(4)(b)),

and, where the authorising officer is within note 3 head (12) supra, it relates to an assigned matter within the meaning of the Customs and Excise Management Act 1979 s 1(1) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 904) (Police Act 1997 s 93(4)). As from a day to be appointed head (2) supra is amended so as to refer to the age of 18 in relation to England and Wales: s 93(4)(b) (prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 para 149). At the date at which this volume states the law no such day had been appointed.

11 Police Act 1997 s 93(2)(b) (substituted by the Regulation of Investigatory Powers Act 2000 s 75(1), (4)(b)).

12 Police Act 1997 s 93(2B) (added by the Regulation of Investigatory Powers Act 2000 s 75(1), (5)).

13 Police Act 1997 s 93(7). As to the office of constable see PARA 101 et seq ante. For the meaning of 'enactment' see PARA 102 note 5 ante.

14 Where *ibid* s 94(2) (as amended) applies, the powers conferred on the authorising officer by s 93 (as amended) (see the text to notes 1-13 supra) may, in an urgent case, be exercised: (1) where the authorising officer is within note 3 head (1) or (4) supra, by a person holding the rank of assistant chief constable in his force; (2) where the authorising officer is within note 3 head (2) supra, by a person holding the rank of commander in the metropolitan police force; (3) where the authorising officer is within note 3 head (3) supra, by a person holding the rank of commander in the City of London police force; (4) where the authorising officer is within note 3 head (5) supra, by a person holding the rank of assistant chief constable in the Police Service of Northern Ireland; (5) where the authorising officer is within note 3 head (6) supra, by a person holding the rank of deputy or assistant chief constable in the Ministry of Defence Police; (6) where the authorising officer is within note 3 head (7) supra, by a person holding the position of assistant Provost Marshal in the Royal Navy Police; (7) where the authorising officer is within note 3 head (8) or (9) supra, by a person holding the position of deputy Provost Marshal in the Royal Military Police or, as the case may be, in the Royal Air Force Police; (8) where the authorising officer is within note 3 head (10) supra, by a person holding the rank of deputy or assistant chief constable in the British Transport Police; (9) where the authorising officer is within note 3 head (11) supra, by a person designated for these purposes by the Director General of the Serious Organised Crime Agency; (10) where the authorising officer is within note 3 head (12) supra, by an officer of revenue and customs designated by the Commissioners for Revenue and Customs for these purposes; (11) where the authorising officer is within note 3 head (13) supra, by an officer of the Office of Fair Trading designated by it for these purposes: s 94(2) (amended by the Police (Northern Ireland) Act 2000 Sch 6 para 20(1), (2)(b); the Regulation of Investigatory Powers Act 2000 s 82(1), Sch 4 para 8(4)(a); the Enterprise Act 2002 s 200(1), (3); the Serious Organised Crime and Police Act 2005 Sch 4 paras 94, 98(1), (3); the Armed Forces Act 2006 s 378(1), Sch 16 para 147). Where the authorising officer is the Director General of the Scottish Crime and Drug Enforcement Agency, the powers may be exercised by a person who is: (a) the chief constable whose relevant area is the area to which the application for authorisation relates; or (b) his designated deputy (within the meaning of head (c) *infra*); or (c) where it is not reasonably practicable for the chief constable or his designated deputy to consider the application, a person holding the rank of assistant chief constable in the chief constable's police force: s 94(2)(h), (5) (both added by the Police, Public Order and Criminal Justice (Scotland) Act 2006 Sch 6 para 6(1), (3)(a), (c)). As to ranks see PARA 230 ante.

The Police Act 1997 94(2) (as amended) applies where it is not reasonably practicable for an authorising officer to consider an application for an authorisation under s 93 (as amended) and: (i) if the authorising officer is within note 3 head (2), (5) or (11) supra, it is also not reasonably practicable for the application to be considered by any of the other persons within the head concerned; or (ii) if the authorising officer is within note 3 head (1), (3) or (4) supra, it is also not reasonably practicable for the application to be considered by his designated deputy: s 94(1) (amended by the Regulation of Investigatory Powers Act 2000 Sch 4 para 8(3), Sch 5; and the Serious Organised Crime and Police Act 2005 Sch 4 paras 94, 98(1), (2), Sch 17 Pt 2). 'Designated deputy' means: (A) in the case of an authorising officer within note 3 head (1) supra, the person who is the appropriate deputy chief constable for the purposes of the Police Act 1996 s 12A(1) (as added) (see PARA 178 ante), or the person holding the rank of assistant chief constable designated to act under s 12A(2) (as added) (see PARA 178 ante); (B) in the case of an authorising officer within note 3 head (3) supra, means the person

authorised to act under the City of London Police Act 1839 s 25; (c) in the case of an authorising officer within note 3 head (4) supra (aa) the person holding the rank of deputy chief constable and, where there is more than one person in a police force who holds that rank, who is designated as the officer having the powers and duties conferred on a deputy chief constable by the Police (Scotland) Act 1967 s 5A(1) (as added); or (bb) the person holding the rank of assistant chief constable who is designated to act under s 5A(2) (as added): Police Act 1997 s 94(4) (amended by the Crime and Disorder Act 1998 ss 113(3), 120(2), Sch 10; the Regulation of Investigatory Powers Act 2000 Sch 5; the Police and Justice Act 2006 s 52, Sch 14 para 34; and the Police, Public Order and Criminal Justice (Scotland) Act 2006 Sch 6 para 6(1), (3)(b)(ii)).

## UPDATE

### **483 Authorisations to interfere with property or wireless telegraphy under the Police Act 1997**

NOTES 3, 9, 14--1997 Act ss 93(1B), (5), 94(2) further amended: Serious Crime Act 2007 Sch 12 paras 1, 2.

NOTE 5--1997 Act s 93(6A) amended, s 93(6B) substituted: Armed Forces Act 2006 Sch 16 para 146.

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### **484. Form, duration and notification of authorisations.**

An authorisation<sup>1</sup> must be in writing, except that in an urgent case an authorisation, other than one given in the absence of an authorising officer<sup>2</sup>, may be given orally<sup>3</sup>. An authorisation, unless it is renewed<sup>4</sup>, ceases to have effect: (1) if given orally or in the absence of an authorising officer, at the end of the period of 72 hours beginning with the time it took effect<sup>5</sup>; (2) in any other case, at the end of the period of three months beginning with the day on which it took effect<sup>6</sup>. If at any time before an authorisation would cease to have effect the authorising officer who gave the authorisation, or in whose absence it was given, considers it necessary for the authorisation to continue to have effect for the purpose for which it was issued, he may, in writing, renew it for a period of three months beginning with the day on which it would cease to have effect<sup>7</sup>. A person must cancel an authorisation given by him if he is satisfied that the authorisation is one in relation to which the specified requirements<sup>8</sup> are no longer satisfied<sup>9</sup>; and, likewise, an authorising officer must cancel an authorisation given in his absence if he is satisfied that those requirements are no longer satisfied<sup>10</sup>.

Where a person gives, renews or cancels an authorisation, he must, as soon as is reasonably practicable and in accordance with arrangements made by the Chief Commissioner<sup>11</sup>, give notice in writing that he has done so to a Commissioner<sup>12</sup>. The notice must specify such matters as the Secretary of State<sup>13</sup> may by order prescribe<sup>14</sup>; and, furthermore, a notice of the giving or renewal of an authorisation must specify: (a) whether the authorisation or renewal requires approval<sup>15</sup>; and (b) where approval would be required were it not for the fact that the case is believed to be one of urgency<sup>16</sup>, the grounds on which it is believed to be so<sup>17</sup>. Where such a notice is given to a Commissioner, he must scrutinise the notice as soon as is reasonably practicable<sup>18</sup>.

1 As to authorisations see PARA 483 ante.

2 Ie an authorisation given by virtue of the Police Act 1997 s 94 (as amended): see PARA 483 ante. For the meaning of 'authorising officer' see PARA 483 note 3 ante.

- 3 Ibid s 95(1). For the meaning of 'writing' see PARA 115 note 9 ante.
- 4 Ie renewed under ibid s 95(3): see the text to note 7 infra.
- 5 Ibid s 95(2)(a).
- 6 Ibid s 95(2)(b). For the meaning of 'month' see PARA 140 note 17 ante.
- 7 Ibid s 95(3). If the authorising officer is within PARA 483 note 3 head (2), (5) or (11) ante, the powers conferred on that person by s 95(3), (4) (as amended) (see the text to notes 8-9 infra) are also exercisable by each of the other persons within the head concerned: s 95(6) (amended by the Regulation of Investigatory Powers Act 2000 s 82(1), Sch 4 para 8(6)(b); and the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 94, 99(1), (2)). Nothing in the Police Act 1997 s 95 (as amended) prevents a designated deputy from exercising the powers conferred by s 95(3)-(5) (as amended) on an authorising officer within PARA 483 note 3 head (1), (3) or (4) ante: s 95(7) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 94, 99(1), (3)). For the meaning of 'designated deputy' see PARA 483 note 14 ante.
- 8 Ie the requirements of the Police Act 1997 s 93(2)(a), (b): see PARA 483 ante.
- 9 Ibid s 95(4) (s 95(4), (5) amended by the Regulation of Investigatory Powers Act 2000 Sch 4 para 8(6)(a)). The provisions of the Police Act 1997 s 95(6), (7) (as amended) also apply in relation to s 95(4) (as amended): see note 7 supra.
- 10 Ibid s 95(5) (as amended: see note 9 supra). Section 95(7) (as amended) also applies in relation to s 95(5) (as amended): see note 7 supra.
- 11 As to the Chief Commissioner see PARA 486 post.
- 12 Police Act 1997 s 96(1). As to the Commissioners see PARA 486 post. Where, under Pt III (ss 91-108) (as amended), notice of any matter is required to be given in writing, the notice may be transmitted by electronic means: s 108(2).
- 13 As to the Secretary of State see PARA 107 note 15 ante.
- 14 Police Act 1997 s 96(2). Such an order is made by statutory instrument: s 96(5). A statutory instrument which contains such an order may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament: s 96(6). As to the order that has been made see the Police Act 1997 (Notification of Authorisations etc) Order 1998, SI 1998/3241.
- 15 Police Act 1997 s 96(3)(a). The approval referred to in the text is that under s 97 (as amended): see PARA 485 post.
- 16 Ie in cases in which ibid s 97 (as amended) does not apply by virtue of s 97(3): see PARA 485 post.
- 17 Ibid s 96(3)(b).
- 18 Ibid s 96(4).

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#### **485. Authorisations requiring approval.**

Certain authorisations<sup>1</sup> do not take effect until they have been approved by a Commissioner<sup>2</sup> and the person who gave the authorisation has been notified<sup>3</sup>. An authorisation requires approval if, at the time the authorisation is given, the person who gives it believes: (1) that any of the property specified in the authorisation is used wholly or mainly as a dwelling or as a bedroom in a hotel<sup>4</sup>, or constitutes office premises<sup>5</sup>; or (2) that the action authorised by it is likely to result in any person acquiring knowledge of matters subject to legal privilege<sup>6</sup>, confidential personal information<sup>7</sup>, or confidential journalistic material<sup>8</sup>. However, these

provisions do not apply to an authorisation where the person giving it believes that the case is one of urgency<sup>9</sup>.

Where a Commissioner receives a notice<sup>10</sup> which specifies that the authorisation is one which requires approval<sup>11</sup>, he must, as soon as is reasonably practicable: (a) decide whether to approve the authorisation or refuse approval<sup>12</sup>; and (b) give written notice of his decision to the person who gave the authorisation<sup>13</sup>. A Commissioner may approve an authorisation if, and only if, he is satisfied that there are reasonable grounds for believing specified matters<sup>14</sup>. Where a Commissioner refuses to approve an authorisation, he must, as soon as is reasonably practicable, make a report of his findings to the authorising officer who gave it or in whose absence it was given<sup>15</sup>.

These provisions also apply to the renewal of an authorisation<sup>16</sup>.

1 As to authorisations see PARA 483 ante.

2 Police Act 1997 s 97(1)(a). The text refers to a Commissioner appointed under s 91(1)(b): see PARA 486 post.

3 Ibid s 97(1)(b). As to notification see s 97(4); and the text to notes 10-13 infra.

4 Ibid s 97(2)(a)(i). 'Hotel' means premises used for the reception of guests who desire to sleep in the premises: s 97(8).

5 Ibid s 97(2)(a)(ii). 'Office premises' has the same meaning as in the Offices, Shops and Railway Premises Act 1963 s 1(2) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 328): Police Act 1997 s 97(8).

6 Ibid s 97(2)(b)(i). 'Matters subject to legal privilege' means: (1) communications between a professional adviser and his client or any person representing his client, which are made in connection with the giving of legal advice to the client; (2) communications: (a) between a professional legal adviser and his client or any person representing his client; or (b) between a professional legal adviser or his client or any such representative and any other person, which are made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; (3) items enclosed with or referred to in communications of the kind mentioned in heads (1) and (2) supra and made in connection with the giving of legal advice, or in connection with or in contemplation of legal proceedings and for the purposes of such proceedings: s 98(1)-(4). For these purposes, communications and items are not matters subject to legal privilege when they are in the possession of a person who is not entitled to possession of them; and communications and items held, or oral communications made, with the intention of furthering a criminal purpose are not matters subject to legal privilege: s 98(5).

7 Ibid s 97(2)(b)(ii). 'Confidential personal information' means: (1) personal information which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office, and which he holds in confidence; and (2) communications as a result of which personal information is acquired or created as mentioned in head (1) supra and is held in confidence: s 99(1). 'Personal information' means information concerning an individual, whether living or dead, who can be identified from it and relating to his physical or mental health, or to spiritual counselling or assistance given or to be given to him: s 99(2). A person holds information in confidence if he holds it subject to an express or implied undertaking to hold it in confidence or to a restriction on disclosure or an obligation of secrecy contained in any enactment: s 99(3). For the meaning of 'enactment' see PARA 102 note 5 ante. As to obligations of confidence generally see CONFIDENCE AND DATA PROTECTION.

8 Ibid s 97(2)(b)(iii). 'Confidential journalistic material' means: (1) material acquired or created for the purposes of journalism which: (a) is in the possession of persons who acquired or created it for those purposes; (b) is held subject to an undertaking, restriction or obligation of the kind mentioned in s 99(3) (see note 7 supra); and (c) has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism; and (2) communications as a result of which information is acquired for the purposes of journalism and held as mentioned in head (1)(b) supra: s 100(1). A person who receives material, or acquires information, from someone who intends that the recipient should use it for the purposes of journalism is to be taken to have acquired it for those purposes: see s 100(2).

9 Ibid s 97(3).

10 Ie a notice under ibid s 96: see PARA 484 ante.

- 11 le an authorisation to which *ibid* s 97 (as amended) applies: see s 97(4).
- 12 *Ibid* s 97(4)(a).
- 13 *Ibid* s 97(4)(b). For the meaning of 'writing' see PARA 115 note 9 ante. As to the giving of notice see PARA 484 note 12 ante.
- 14 *Ibid* s 97(5). The specified matters are those specified in s 93(2): see PARA 483 ante.
- 15 *Ibid* s 97(6) (amended by the Regulation of Investigatory Powers Act 2000 s 82(1), (2), Sch 4 para 8(7), Sch 5). The reference to the authorising officer who gave the authorisation or in whose absence it was given must be construed: (1) in the case of an authorisation given by or in the absence of a person within PARA 483 note 3 head (2) or (5) ante, as a reference to the Metropolitan Police Commissioner or, as the case may be, the chief constable of the Police Service of Northern Ireland (Police Act 1997 s 97(6A) (added by the Regulation of Investigatory Powers Act 2000 Sch 4 para 8(7); and amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 94, 100(1), (2))); (2) in the case of an authorisation given by a person within PARA 483 note 3 head (11) ante, as a reference to that person (Police Act 1997 s 97(6B)(a) (s 97(6B) added by the Serious Organised Crime and Police Act 2005 Sch 4 paras 94, 100(1), (3))); and (3) in the case of an authorisation given in the absence of such a person, as a reference to a member of the staff of the Serious Organised Crime Agency who is designated for these purposes by the Director General of that Agency (Police Act 1997 s 97(6B)(b) (as so added)). As to the Metropolitan Police Commissioner see PARA 183 ante. As to the Serious Organised Crime Agency see PARA 430 et seq ante.
- 16 See *ibid* s 97(7).

## UPDATE

### 485 Authorisations requiring approval

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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### 486. The Commissioners.

The Prime Minister, after consultation with the Scottish Ministers, must appoint a Chief Commissioner and such number of other Commissioners as he thinks fit<sup>1</sup>. The persons appointed must be persons who hold or have held high judicial office<sup>2</sup>. Each Commissioner holds and vacates office in accordance with the terms of his appointment, subject to the following provisions<sup>3</sup>: (1) each Commissioner is appointed for a term of three years<sup>4</sup>; (2) a person who ceases to be a Commissioner<sup>5</sup> may be re-appointed<sup>6</sup>; (3) a Commissioner may not be removed from office before the end of the term for which he is appointed unless a resolution approving his removal has been passed by each House of Parliament<sup>7</sup> and the Scottish Parliament<sup>8</sup>; (4) a Commissioner may be removed from office by the Prime Minister in specified circumstances<sup>9</sup>.

The Secretary of State<sup>10</sup> must pay to each Commissioner, other than a Commissioner carrying out functions wholly or mainly in Scotland, such allowances as the Secretary of State considers appropriate<sup>11</sup>. The Secretary of State must, after consultation with the Chief Commissioner and subject to the approval of the Treasury as to numbers, provide the Commissioners, other than any Commissioner carrying out functions wholly or mainly in Scotland, with such staff as the Secretary of State considers necessary for the discharge of their functions<sup>12</sup>.

The decisions of the Chief Commissioner or, subject to certain provisions regarding appeals<sup>13</sup>, any other Commissioner (including decisions as to his jurisdiction) are not subject to appeal or liable to be questioned in any court<sup>14</sup>.

The Chief Commissioner must keep under review the performance of functions relating to interference with property and wireless telegraphy<sup>15</sup> and make an annual report on the matters with which he is concerned to the Prime Minister and to the Scottish Ministers and may at any time report to him or them (as the case may require) on anything relating to any of those matters<sup>16</sup>.

Any person with functions relating to interference with property and wireless telegraphy, and any person taking action in relation to which an authorisation<sup>17</sup> was given, must comply with any request of a Commissioner for documents or information required by him for the purpose of enabling him to discharge his functions<sup>18</sup>. It is the duty of: (a) every person by whom, or on whose application, there has been given or granted any authorisation the function of giving or granting which is subject to review by the Chief Commissioner<sup>19</sup>; (b) every person who has engaged in conduct with the authority of such an authorisation<sup>20</sup>; (c) every person who holds or has held any office, rank or position with the same public authority as a person falling within head (a) above<sup>21</sup>; (d) every person who holds or has held any office, rank or position with any public authority for whose benefit<sup>22</sup> activities which are or may be subject to any such review have been or may be carried out<sup>23</sup>; and (e) every person to whom a notice<sup>24</sup> imposing a disclosure requirement in respect of information protected by a key has been given in relation to any information obtained by conduct to which such an authorisation relates<sup>25</sup>, to disclose or provide to the Chief Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions<sup>26</sup>.

It is the duty of every Commissioner to give the tribunal established under the Regulation of Investigatory Powers Act 2000<sup>27</sup> all such assistance (including his opinion as to any issue falling to be determined by that tribunal) as that tribunal may require in connection with the investigation of any matter by that tribunal<sup>28</sup>, or otherwise for the purposes of that tribunal's consideration or determination of any matter<sup>29</sup>.

1 Police Act 1997 s 91(1) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, art 3, Sch 6 para 2(1), (2)(a)). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS. The Chief Commissioner, who is also known as the Chief Surveillance Commissioner, has additional functions under the Regulation of Investigatory Powers Act 2000: see s 62; and PARA 491 post.

2 Police Act 1997 s 91(2). High judicial office means such office within the meaning of the Appellate Jurisdiction Act 1876 s 25 (as amended) (see COURTS vol 10 (Reissue) PARA 365); see the Police Act 1997 s 91(2). As from a day to be appointed this definition is substituted so as to refer to persons who hold or have held high judicial office within the meaning of the Constitutional Reform Act 2005 Pt 3 (ss 23-60) (see COURTS vol 10 (Reissue) PARA 601) or who are or have been members of the Judicial Committee of the Privy Council: Police Act 1997 s 91(2) (prospectively amended by the Constitutional Reform Act 2005 s 145, Sch 17 para 27). At the date at which this volume states the law no such day had been appointed. As to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 Police Act 1997 s 91(3).

4 Ibid s 91(4).

5 Ie except persons who are removed from office as Commissioner by the Prime Minister under ibid s 91(7) (as amended) (see the text to note 9 infra): see s 91(5).

6 Ibid s 91(5).

7 Ibid s 91(6)(a) (s 91(6) substituted by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 6 para 2(1), (2)(b)). This provision is subject to the Police Act 1997 s 91(7) (as amended) (see the text to note 9 infra): see s 91(6) (as so substituted).

8 See *ibid* s 91(6)(b) (as substituted: see note 7 *supra*). This provision is subject to s 91(7) (as amended) (see the text to note 9 *infra*): see s 91(6) (as so substituted).

9 *Ibid* s 91(7). The specified circumstances are that, after the appointment of the Commissioner: (1) a bankruptcy order is made against him, or his estate is sequestrated, or he makes a composition or arrangement with, or grants a trust deed for, his creditors (s 91(7)(a)); (2) a disqualification order under the Company Directors Disqualification Act 1986 or the Companies (Northern Ireland) Order 1989, SI 1989/2402, Pt II, or an order under the Insolvency Act 1986 s 429(2)(b) (see *BANKRUPTCY AND INDIVIDUAL INSOLVENCY* vol 3(2) (2002 Reissue) PARA 910), is made against him, or his disqualification undertaking is accepted under the Company Directors Disqualification Act 1986 s 7 or s 8 (see *COMPANIES* vol 15 (2009) PARAS 1584, 1596-1599) or under the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150 (NI 4) (Police Act 1997 s 91(7)(b) (amended by the Insolvency Act 2000 s 8, Sch 4 para 22(1), (2); and the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004, SI 2004/1941, art 3, Schedule paras 9, 10)); or (3) he is convicted in the United Kingdom, the Channel Islands or the Isle of Man of an offence and has passed on him a sentence of imprisonment (whether suspended or not) (Police Act 1997 s 91(7)(c)). For the meaning of 'United Kingdom' see PARA 102 note 7 *ante*. As to bankruptcy and arrangements and compositions with creditors see *BANKRUPTCY AND INDIVIDUAL INSOLVENCY*.

10 As to the Secretary of State see PARA 107 note 15 *ante*.

11 Police Act 1997 s 91(8) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 6 para 2(1), (2)(c)). The Scottish Ministers must pay to any Commissioner who carries out his functions wholly or mainly in Scotland such allowances as the Scottish Ministers consider appropriate: Police Act 1997 s 91(8A) (added by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 6 para 2(1), (2)(d)).

12 Police Act 1997 s 91(9) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 6 para 2(1), (2)(f); and the Regulation of Investigatory Powers Act 2000 s 82(1), Sch 4 para 8(1)(a)). This provision also applies to any Assistant Surveillance Commissioners holding office under the Regulation of Investigatory Powers Act 2000 s 63 (see PARA 491 *post*): see the Police Act 1997 s 91(9) (amended by the Regulation of Investigatory Powers Act 2000 Sch 4 para 8(1)(b)). The Scottish Ministers must, after consultation with the Chief Commissioner, provide any Commissioner who carries out his functions wholly or mainly in Scotland with such staff as the Scottish Ministers consider necessary for the discharge of his functions: Police Act 1997 s 91(9A) (added by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 6 para 2(1), (2)(g)). As to the Treasury see *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue) PARAS 512-517.

13 *Ie* subject to the Police Act 1997 ss 104, 106: see PARA 488 *post*.

14 *Ibid* s 91(10). As to judicial review of decisions expressed to be final see *JUDICIAL REVIEW* vol 61 (2100) PARA 655.

15 *Ibid* s 107(1). The functions referred to in the text are those under Pt III (s 91-108) (as amended).

16 *Ibid* s 107(2) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 6 para 2(1), (5)(a); and the Regulation of Investigatory Powers Act 2000 Sch 4 para 8(10)(a)). The Prime Minister must lay before each House of Parliament, and the Scottish Ministers must lay before the Scottish Parliament, a copy of each such annual report made by the Chief Commissioner together with a statement as to whether any matter has been excluded from that copy in pursuance of the Police Act 1997 s 107(4): see s 107(3), (3A) (s 107(3A) added by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 6 para 2(1), (5)(b)). The Prime Minister may exclude a matter from the copy of a report as laid before each House of Parliament, if it appears to him, after consultation with the Chief Commissioner and the Scottish Ministers, that the publication of that matter in the report would be prejudicial to any of the purposes for which authorisations may be given or granted under the Police Act 1997 Pt III (as amended) or the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended) (see PARA 489 *et seq post*) or under any enactment contained in or made under an Act of the Scottish Parliament which makes provision equivalent to that made by the Regulation of Investigatory Powers Act 2000 Pt II (as amended), or otherwise to the discharge of the functions of any police authority, the functions of the Serious Organised Crime Agency, the functions of the Scottish Crime and Drug Enforcement Agency, or the duties of the Commissioners for Revenue and Customs: Police Act 1997 s 107(4) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, Sch 6 para 2(1), (5)(c); the Regulation of Investigatory Powers Act 2000 Sch 4 para 8(10)(b); the Serious Organised Crime and Police Act 2005 Sch 4 paras 94, 102; the Police, Public Order and Criminal Justice (Scotland) Act 2006 s 101, Sch 6 para 6(1), (5); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). For the meaning of 'police authority' see PARA 139 note 1 *ante*. As to the Serious Organised Crime Agency see PARA 430 *et seq ante*. As to the Commissioners for Revenue and Customs see *CUSTOMS AND EXCISE* vol 12(3) (2007 Reissue) PARA 900 *et seq*.

17 As to authorisations see PARA 483 ante.

18 Police Act 1997 s 107(5).

19 Ibid s 107(5A)(a) (s 107(5A)-(5C) added by the Regulation of Investigatory Powers Act 2000 Sch 4 para 8(10)(c), (11)).

20 Police Act 1997 s 107(5A)(b) (as added: see note 19 supra).

21 Ibid s 107(5A)(c) (as added: see note 19 supra). 'Public authority' means any public authority within the meaning of the Human Rights Act 1998 s 6 (acts of public authorities: see CONSTITUTIONAL LAW AND HUMAN RIGHTS) other than a court or tribunal: Police Act 1997 s 107(5C) (as so added).

22 Ie within the meaning of the Regulation of Investigatory Powers Act 2000 Pt II (as amended): see PARA 489 post.

23 Police Act 1997 s 107(5A)(d) (as added: see note 19 supra).

24 Ie a notice under the Regulation of Investigatory Powers Act 2000 s 49: see PARA 512 post.

25 Police Act 1997 s 107(5A)(e) (as added: see note 19 supra).

26 Ibid s 107(5A) (as added: see note 19 supra).

27 Ie under the Regulation of Investigatory Powers Act 2000 s 65: see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

28 Police Act 1997 s 107(5B)(a) (as added: see note 19 supra).

29 Ibid s 107(5B)(b) (as added: see note 19 supra).

## UPDATE

### 486 The Commissioners

NOTE 2--Appointed day is 1 October 2009: SI 2009/1604.

NOTE 9--Police Act 1997 s 91(7)(b) amended: SI 2009/1941.

NOTE 16--1997 Act s 107(4) further amended: Serious Crime Act 2007 Sch 12 para 3.

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### 487. Quashing and cancellation of authorisations.

Where, at any time, a Commissioner<sup>1</sup> is satisfied that, at the time the authorisation<sup>2</sup> was given or renewed, there were no reasonable grounds for believing specified matters<sup>3</sup>, he may quash the authorisation or renewal<sup>4</sup>. Where, in the case of an authorisation or renewal which does not require approval<sup>5</sup>, a Commissioner is at any time satisfied that, at the time the authorisation was given or renewed: (1) there were reasonable grounds for believing any of the matters which, if believed, would require the authorisation to be approved<sup>6</sup>; and (2) there were no reasonable grounds for believing the case to be one of urgency<sup>7</sup>, he may quash the authorisation or renewal<sup>8</sup>. If a Commissioner is satisfied that, at any time after an authorisation was given, or, in the case of a renewed authorisation, after it was renewed, there were no reasonable grounds for believing the specified matters<sup>9</sup>, he may cancel the authorisation<sup>10</sup>.

Where a Commissioner quashes or cancels an authorisation or renewal he must, if he is satisfied that there are reasonable grounds for doing so, order that the authorisation will be



effective, for such period as he specifies, so far as it authorises the taking of action to retrieve anything left on property in accordance with the authorisation<sup>11</sup>.

Where a Commissioner exercises a power conferred by these provisions, he must, as soon as is reasonably practicable, make a report of his findings to the authorising officer<sup>12</sup> who gave the authorisation or in whose absence it was given<sup>13</sup>, and to the Chief Commissioner<sup>14</sup>.

A Commissioner may exercise any of the powers conferred by these provisions notwithstanding any approval given for an authorisation or renewal<sup>15</sup>.

1    Ie a Commissioner appointed under the Police Act 1997 s 91(1)(b): see PARA 486 ante.

2    As to authorisations see PARA 483 ante.

3    Ie the matters specified in the Police Act 1997 s 93(2): see PARA 483 ante.

4    Ibid s 103(1). Where a Commissioner quashes an authorisation or renewal under s 103(1) or (2) (see the text to notes 5-8 infra), he may order the destruction of any records relating to information obtained by virtue of the authorisation (or, in the case of a renewal, relating wholly or partly to information so obtained after the renewal) other than records required for pending criminal or civil proceedings: s 103(3). The order does not become operative until the period for appealing against the decision has expired and, where an appeal is made, a decision dismissing it has been made by the Chief Commissioner: s 103(8). 'Criminal proceedings' includes proceedings in the United Kingdom or elsewhere before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, proceedings before the Courts-Martial Appeal Court, and proceedings before a standing civilian court (see ARMED FORCES): Police Act 1997 s 108(1) (definition amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 1). As to appeals see PARA 488 post.

5    Ie an authorisation or renewal to which the Police Act 1997 s 97 (as amended) (see PARA 485 ante) does not apply: see s 103(2).

6    Ibid s 103(2)(a). The matters referred to in the text are those specified in s 97(2): see PARA 485 ante.

7    Ibid s 103(2)(b). A case is one of urgency if it is one to which s 97(3) applies (see PARA 485 ante): see s 103(2)(b).

8    Ibid s 103(2). See also note 4 supra.

9    Ie the matters specified in ibid s 93(2): see PARA 483 ante.

10   Ibid s 103(4). Where an authorisation has ceased to have effect (otherwise than by virtue of s 103(1) or (2): see the text to notes 1-8 supra), and a Commissioner is satisfied that, at any time during the period of authorisation, there were no reasonable grounds for believing the matters specified in s 93(2) (see PARA 483 ante), he may order the destruction of any records relating, wholly or partly, to information which was obtained by virtue of the authorisation after that time (other than records required for pending criminal or civil proceedings): s 103(5). The order does not become operative until the period for appealing against the decision has expired and, where an appeal is made, a decision dismissing it has been made by the Chief Commissioner: s 103(8).

11   Ibid s 103(6).

12   For the meaning of 'authorising officer' see PARA 483 note 3 ante.

13   Police Act 1997 s 103(7)(a). Section 97(6A) (as added) (see PARA 485 ante) applies for the purposes of s 103(7) as it applies for the purposes of s 97(6): s 103(7) (amended by the Regulation of Investigatory Powers Act 2000 s 82(1), Sch 4 para 8(8)).

14   Police Act 1997 s 103(7)(b). See also note 13 supra.

15   Ibid s 103(9).

## UPDATE

### 487 Quashing and cancellation of authorisations

NOTE 4--Definition of 'criminal proceedings' further amended: Armed Forces Act 2006 Sch 16 para 148.

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#### **488. Appeals.**

An authorising officer<sup>1</sup> who gives an authorisation<sup>2</sup>, or in whose absence it is given, may within the prescribed period<sup>3</sup> appeal to the Chief Commissioner<sup>4</sup> against: (1) any refusal to approve the authorisation or any renewal of it<sup>5</sup>; (2) certain decisions to quash the authorisation, or any renewal of it<sup>6</sup>; (3) certain other decisions to quash the authorisation, or any renewal of it<sup>7</sup>; (4) any decision to cancel the authorisation<sup>8</sup>; (5) any decision to order the destruction of records<sup>9</sup>; (6) any refusal to make an order that the authorisation be effective for the purpose of taking action to retrieve anything left on property in accordance with the authorisation<sup>10</sup>.

Where the Chief Commissioner determines an appeal, he must give notice of his determination<sup>11</sup> to the authorising officer concerned<sup>12</sup> and to the Commissioner against whose refusal, decision or determination the appeal was made<sup>13</sup>. If he dismisses the appeal, he must make a report of his findings: (a) to the authorising officer concerned<sup>14</sup>; (b) to the Commissioner against whose refusal, decision or determination the appeal was made<sup>15</sup>; and (c) in his annual report<sup>16</sup>, to the Prime Minister and the Scottish Ministers<sup>17</sup>. Otherwise, the Chief Commissioner must not give any reasons for his determination<sup>18</sup>.

1 For the meaning of 'authorising officer' see PARA 483 note 3 ante.

2 As to authorisations see PARA 483 ante.

3 'Prescribed period' means the period of seven days beginning with the day on which the refusal, decision, or determination appealed against is reported to the authorising officer: Police Act 1997 s 104(2).

4 Ibid s 104(1). Nothing in s 104 (as amended) prevents a designated deputy from exercising the powers conferred by s 104(1) on an authorising officer within PARA 483 note 3 head (1), (3) or (4) ante: s 105(3) (amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 94, 101). As to the construction of references to the authorising officer in whose absence an authorisation (or renewal) was given see the Police Act 1997 s 108(3). As to the Chief Commissioner see PARA 486 ante. For the meaning of 'designated deputy' see PARA 483 note 14 ante.

5 Ibid s 104(1)(a). The text refers to refusal to approve under s 97 (as amended): see PARA 485 ante. In determining such an appeal, the Chief Commissioner must, if he is satisfied that there are reasonable grounds for believing the matters specified in s 93(2) (see PARA 483 ante), allow the appeal and direct the Commissioner to approve the authorisation or renewal: s 104(3).

6 Ibid s 104(1)(b). The text refers to decisions under s 103(1): see PARA 487 ante. In determining such an appeal, the Chief Commissioner must allow the appeal unless he is satisfied that, at the time the authorisation was given or renewed, there were no reasonable grounds for believing the matters specified in s 93(2) (see PARA 483 ante): s 104(4) (s 104(4)-(6) amended by the Regulation of Investigatory Powers Act 2000 s 82(2), Sch 5). Where the appeal is allowed, the Chief Commissioner must also quash any order made by the Commissioner to destroy records relating to information obtained by virtue of the authorisation concerned: Police Act 1997 s 104(8)(a).

7 Ibid s 104(1)(c). The text refers to decisions under s 103(2): see PARA 487 ante. In determining such an appeal, the Chief Commissioner must allow the appeal unless he is satisfied as mentioned in s 103(2) (see PARA 487 ante): s 104(5) (as amended: see note 6 supra). Where the appeal is allowed, the Chief Commissioner must also quash any order by the Commissioner to destroy records relating to information obtained by virtue of the authorisation: s 104(8)(a).

8 Ibid s 104(1)(d). The text refers to a decision under s 103(4): see PARA 487 ante. In determining such an appeal, the Chief Commissioner must allow the appeal unless he is satisfied that, at the time to which the decision relates, there were no reasonable grounds for believing the matters specified in s 93(2) (see PARA 483 ante): s 104(6) (as amended: see note 6 supra).

9 Ibid s 104(1)(e). The text refers to a decision under s 103(5): see PARA 487 ante. In determining such an appeal, the Chief Commissioner must allow the appeal unless he is satisfied that, at the time to which the decision relates, there were no reasonable grounds for believing the matters specified in s 93(2) (see PARA 483 ante): s 104(6) (as amended: see note 6 supra).

10 Ibid s 104(1)(f). The text refers to a decision under s 103(6): see PARA 487 ante. In determining such an appeal, the Chief Commissioner must allow the appeal and order that the authorisation is to be effective to the extent mentioned in s 103(6), for such period as he specifies, if he is satisfied that there are reasonable grounds for making such an order: s 104(7).

11 As to the giving of notice see PARA 484 note 12 ante.

12 Police Act 1997 s 105(1)(a)(i).

13 Ibid s 105(1)(a)(ii).

14 Ibid s 105(1)(b)(i).

15 Ibid s 105(1)(b)(ii).

16 Ie the report under ibid s 107(2): see PARA 486 ante.

17 Ibid s 105(1)(b)(iii) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, art 3, Sch 6 para 2(1), (3)). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

18 Police Act 1997 s 105(2).

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### **(3) SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES**

#### **(i) Introduction**

#### **489. Conduct to which the Regulation of Investigatory Powers Act 2000 applies.**

Part II of the Regulation of Investigatory Powers Act 2000<sup>1</sup> applies to the following conduct: (1) directed surveillance<sup>2</sup>; (2) intrusive surveillance<sup>3</sup>; and (3) the conduct and use of covert human intelligence sources<sup>4</sup>.

Surveillance is 'directed' if it is covert<sup>5</sup> but not intrusive and is undertaken: (a) for the purposes of a specific investigation or a specific operation<sup>6</sup>; (b) in such a manner as is likely to result in the obtaining of private information about a person<sup>7</sup> (whether or not one specifically identified for the purposes of the investigation or operation)<sup>8</sup>; and (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation<sup>9</sup> to be sought for the carrying out of the surveillance<sup>10</sup>.

Surveillance is 'intrusive' if, and only if, it is covert surveillance that is carried out in relation to anything taking place on any residential premises<sup>11</sup> or in any private vehicle<sup>12</sup> and involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device<sup>13</sup>. However, surveillance is not 'intrusive' to the extent that it is carried out

by means only of a surveillance device designed or adapted principally for the purpose of providing information about the location of a vehicle<sup>14</sup>, or it is surveillance consisting in any interception of a communication in the course of its transmission by means of a postal service or telecommunication system<sup>15</sup>. Surveillance which is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle<sup>16</sup>, but is carried out without that device being present on the premises or in the vehicle<sup>17</sup>, is not 'intrusive' unless the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle<sup>18</sup>.

Surveillance which: (i) is carried out by means of apparatus designed or adapted for the purpose of detecting the installation or use in any residential or other premises of a television receiver<sup>19</sup>; and (ii) is carried out from outside those premises exclusively for that purpose<sup>20</sup>, is neither 'directed' nor 'intrusive'<sup>21</sup>.

A person is a 'covert human intelligence source' if: (A) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within head (B) or head (C) below<sup>22</sup>; (B) he covertly uses such a relationship to obtain information or to provide access to any information to another person<sup>23</sup>; or (C) he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship<sup>24</sup>.

1. See the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended). The Act was introduced after the decision in *Khan v United Kingdom* (Application 35394/97) (2000) 31 EHRR 45, 8 BHRC 310, ECHR, in which it was held that the absence, at the time of the events in question, of a statutory system to regulate the use of covert listening devices was contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8 (right to respect for private life: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 151). The court stated that in the context of covert surveillance by public authorities domestic law had to provide protection against arbitrary interference with an individual's right under art 8; and the law had to be sufficiently clear in its terms to give individuals adequate indication as to the circumstances in which and the conditions on which public authorities were entitled to resort to such covert measures.

2. Regulation of Investigatory Powers Act 2000 s 26(1)(a). 'Surveillance' includes: (1) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications; (2) recording anything monitored, observed or listened to in the course of surveillance; and (3) surveillance by or with the assistance of a surveillance device: s 48(2). However, references to surveillance do not include references to: (a) any conduct of a covert human intelligence source for obtaining or recording (whether or not using a surveillance device) any information which is disclosed in the presence of the source; (b) the use of a covert human intelligence source for so obtaining or recording information; or (c) any such entry on or interference with property or with wireless telegraphy as would be unlawful unless authorised under the Intelligence Services Act 1994 s 5 (warrants for the intelligence services: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 474) or the Police Act 1997 Pt III (ss 91-108) (as amended) (powers of the police and of customs officers: see PARA 483 et seq ante): Regulation of Investigatory Powers Act 2000 s 48(3). References to surveillance include references to the interception of a communication in the course of its transmission by means of a postal service or telecommunication system if, and only if: (i) the communication is one sent by or intended for a person who has consented to the interception of communications sent by or to him; and (ii) there is no interception warrant authorising the interception: s 48(4). 'Surveillance device' means any apparatus designed or adapted for use in surveillance: s 48(1). 'Apparatus' includes any equipment, machinery or device and any wire or cable: s 81(1). For the meaning of 'wireless telegraphy' see PARA 483 note 1 ante; definition applied by s 81(1).

'Communication' includes: (A) (except in the definition of 'postal service') anything transmitted by means of a postal service; (B) anything comprising speech, music, sounds, visual images or data of any description; and (C) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus: s 81(1). 'Postal service' means any service which consists in the following, or in any one or more of them, namely, the collection, sorting, conveyance, distribution and delivery (whether in the United Kingdom or elsewhere) of postal items, and which is offered or provided as a service the main purpose of which, or one of the main purposes of which, is to make available, or to facilitate, a means of transmission from place to place of postal items containing communications: ss 2(1), 81(1). 'Postal item' means any letter, postcard or other such thing in writing as may be used by the sender for imparting information to the recipient, or any packet or parcel: s 2(11). For the meaning of 'United Kingdom' see PARA 102 note 7 ante. A person intercepts a communication in the course of its transmission by means of a

telecommunication system if, and only if, he so modifies or interferes with the system or its operation, or so monitors transmissions made by means of the system, or so monitors transmissions made by wireless telegraphy to or from apparatus comprised in the system, as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication: s 2(2). References to the interception of a communication do not include references to the interception of any communication broadcast for general reception: s 2(3). The interception of a communication takes place in the United Kingdom if, and only if, the modification, interference or monitoring or, in the case of a postal item, the interception is effected by conduct within the United Kingdom and the communication is either intercepted in the course of its transmission by means of a public postal service or public telecommunication system, or intercepted in the course of its transmission by means of a private telecommunication system in a case in which the sender or intended recipient of the communication is in the United Kingdom: s 2(4). 'Modification' includes alterations, additions and omissions; and cognate expressions must be construed accordingly: s 81(1). References to the interception of a communication in the course of its transmission by means of a postal service or telecommunication system do not include references to: (aa) any conduct that takes place in relation only to so much of the communication as consists in any traffic data comprised in or attached to a communication (whether by the sender or otherwise) for the purposes of any postal service or telecommunication system by means of which it is being or may be transmitted; or (bb) any such conduct, in connection with conduct falling within head (aa) supra, as gives a person who is neither the sender nor the intended recipient only so much access to a communication as is necessary for the purpose of identifying traffic data so comprised or attached: s 2(5). For these purposes, references to the modification of a telecommunication system include references to the attachment of any apparatus to, or other modification of or interference with any part of the system, or any wireless telegraphy apparatus used for making transmissions to or from apparatus comprised in the system: s 2(6). For these purposes, the times while a communication is being transmitted by means of a telecommunication system must be taken to include any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it: s 2(7). For these purposes, the cases in which any contents of a communication are to be taken to be made available to a person while being transmitted include any case in which any of the contents of the communication, while being transmitted, are diverted or recorded so as to be available to a person subsequently: s 2(8). 'Traffic data', in relation to any communication, means any data identifying, or purporting to identify, any person, apparatus or location to or from which the communication is or may be transmitted, any data identifying or selecting, or purporting to identify or select, apparatus through which, or by means of which, the communication is or may be transmitted, any data comprising signals for the actuation of apparatus used for the purposes of a telecommunication system for effecting (in whole or in part) the transmission of any communication, and any data identifying the data or other data as data comprised in or attached to a particular communication; but it includes data identifying a computer file or computer program access to which is obtained, or which is run, by means of the communication to the extent only that the file or program is identified by reference to the apparatus in which it is stored: s 2(9). References, in relation to traffic data comprising signals for the actuation of apparatus, to a telecommunication system by means of which a communication is being or may be transmitted include references to any telecommunication system in which that apparatus is comprised; and references to traffic data being attached to a communication include references to the data and the communication being logically associated with each other; and 'data', in relation to a postal item, means anything written on the outside of the item: s 2(10). 'Interception warrant' means a warrant under s 5 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 509): s 81(1). 'Telecommunication system' means any system (including the apparatus comprised in it) which exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy: ss 2(1), 81(1). 'Private telecommunication system' means any telecommunication system which, without itself being a public telecommunication system, is a system in relation to which the following conditions are satisfied: namely, it is attached, directly or indirectly and whether or not for the purposes of the communication in question, to a public telecommunication system; and there is apparatus comprised in the system which is both located in the United Kingdom and used (with or without other apparatus) for making the attachment to the public telecommunication system: ss 2(1), 81(1). 'Public telecommunication system' means any such parts of a telecommunication system by means of which any public telecommunications service is provided as are located in the United Kingdom; and 'public telecommunications service' means any telecommunications service which is offered or provided to, or to a substantial section of, the public in any one or more parts of the United Kingdom: ss 2(1), 81(1). 'Telecommunications service' means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service): ss 2(1), 81(1). 'Public postal service' means any postal service which is offered or provided to, or to a substantial section of, the public in any one or more parts of the United Kingdom: ss 2(1), 81(1).

3 Ibid s 26(1)(b).

4 Ibid s 26(1)(c). References to the conduct of a covert human intelligence source are references to any conduct of such a source which falls within any of the provisions of s 26(8)(a)-(c) (see the text to notes 22-24 infra), or is incidental to anything falling within any of those provisions (s 26(7)(a)); and references to the use of a covert human intelligence source are references to inducing, asking or assisting a person to engage in the conduct of such a source, or to obtain information by means of the conduct of such a source (s 26(7)(b)).

5 For these purposes, surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place: *ibid* s 26(9)(a). See *R v Rosenberg* [2006] EWCA Crim 6, [2006] All ER (D) 127 (Jan) (use by the police in support of a prosecution of video recordings made with their knowledge by a neighbour of the accused not covert).

6 Regulation of Investigatory Powers Act 2000 s 26(2)(a). 'Specific investigation' and 'specific operation' refer to an investigation or operation carried out in the course of the police's core functions; if a police officer is put under surveillance in the course of an appeal over his pension entitlement, then this does not amount to a specific investigation or operation: see *C v The Police and the Secretary of State for the Home Department* (2006) Investigatory Powers Tribunal Case IPT 03/32/H (unreported).

7 'Private information', in relation to a person, includes any information relating to his private or family life: Regulation of Investigatory Powers Act 2000 s 26(10). 'Person' includes any organisation and any association or combination of persons: s 81(1).

8 *Ibid* s 26(2)(b).

9 *Ie* under *ibid* Pt II (as amended). As to authorisations see PARA 493 *et seq post*.

10 *Ibid* s 26(2)(c). Section 26(2) is expressed to be subject to s 26(6): see the text to notes 19-21 *infra*.

11 'Residential premises' means so much of any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as living accommodation (including hotel or prison accommodation that is so occupied or used): *ibid* s 48(1). The reference in this definition to premises occupied or used by any person for residential purposes or otherwise as living accommodation does not include a reference to so much of any premises as constitutes any common area to which he has or is allowed access in connection with his use or occupation of any accommodation: s 48(7)(b). 'Premises' includes any vehicle or moveable structure and any other place whatever, whether or not occupied as land; and 'vehicle' includes any vessel, aircraft or hovercraft: s 48(8).

12 *Ibid* s 26(3)(a). 'Private vehicle' means any vehicle which is used primarily for the private purposes of the person who owns it or of a person otherwise having the right to use it: s 48(1). The reference to a person having the right to use a vehicle does not, in relation to a motor vehicle, include a reference to a person whose right to use the vehicle derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey: s 48(7)(a).

13 *Ibid* s 26(3)(b). References in s 26 (as amended), in relation to a vehicle, to the presence of a surveillance device in the vehicle include references to its being located on or under the vehicle and also include references to its being attached to it: s 26(11).

14 *Ibid* s 26(4)(a).

15 *Ibid* s 26(4)(b). The text refers to interception of a communication which falls within s 48(4) (see note 2 *supra*): s 26(4)(b).

16 *Ibid* s 26(5)(a).

17 *Ibid* s 26(5)(b).

18 *Ibid* s 26(5).

19 *Ibid* s 26(6)(a). 'Television receiver' has the same meaning as in the Communications Act 2003 Pt 4 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 302): Regulation of Investigatory Powers Act 2000 s 26(6)(a) (amended by the Communications Act 2003 s 406(1), Sch 17 para 161(1), (2)).

20 Regulation of Investigatory Powers Act 2000 s 26(6)(b).

21 *Ibid* s 26(6).

22 *Ibid* s 26(8)(a). A purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose: s 26(9)(b).

23 *Ibid* s 26(8)(b). See note 24 *infra*.

24 Ibid s 26(8)(c). A relationship is used covertly, and information obtained as mentioned in s 26(8)(c) is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question: s 26(9)(c).

## UPDATE

### **489 Conduct to which the Regulation of Investigatory Powers Act 2000 applies**

NOTE 2--2000 Act s 48(3) amended: Serious Crime Act 2007 Sch 12 para 18.

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#### **490. Power to extend or modify authorisation provisions.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> do one or both of the following: (1) apply Part II of the Regulation of Investigatory Powers Act 2000<sup>3</sup>, with such modifications as he thinks fit, to any such surveillance<sup>4</sup> that is neither directed nor intrusive<sup>5</sup> as may be described in the order<sup>6</sup>; (2) provide for any description of directed surveillance to be treated as intrusive surveillance<sup>7</sup>. No such order may be made unless a draft of it has been laid before Parliament and approved by a resolution of each House<sup>8</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 The power to make such an order is exercisable by statutory instrument: Regulation of Investigatory Powers Act 2000 s 78(1), (2). An order may make different provisions for different cases and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). As to the order that has been made see the Regulation of Investigatory Powers (British Broadcasting Corporation) Order 2001, SI 2001/1057.

3 Ie the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended).

4 For the meaning of 'surveillance' see PARA 489 note 2 ante.

5 For the meanings of 'directed' and 'intrusive' surveillance see PARA 489 ante.

6 Regulation of Investigatory Powers Act 2000 s 47(1)(a).

7 Ibid s 47(1)(b).

8 Ibid s 47(2). A statutory instrument which contains any such order but which does not contain an order a draft of which has been approved for the purposes of s 47(2) is subject to annulment in pursuance of a resolution of either House of Parliament: s 78(3).

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#### **491. Duty of the Chief Surveillance Commissioner to review exercise of powers and duties.**

The Chief Surveillance Commissioner must (in addition to his functions under the Police Act 1997<sup>1</sup>) keep under review the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties conferred or imposed by or under Part II of the Regulation of Investigatory Powers Act 2000<sup>2</sup>. However, it is not, by virtue of this provision, the function of the Chief Surveillance Commissioner to keep under review the exercise of any power of the Secretary of State<sup>3</sup> to make, amend or revoke any subordinate legislation<sup>4</sup>.

The Prime Minister may, after consultation with the Chief Surveillance Commissioner as to numbers, appoint as Assistant Surveillance Commissioners such number of persons as the Prime Minister considers necessary (in addition to the ordinary Surveillance Commissioners) for the purpose of providing the Chief Surveillance Commissioner with assistance<sup>5</sup>. The Chief Surveillance Commissioner may require any ordinary Surveillance Commissioner or any Assistant Surveillance Commissioner to provide him with assistance in carrying out his functions<sup>6</sup> of reviewing the exercise and performance of powers and duties under the Act<sup>7</sup>. The assistance that may be so provided includes the conduct on behalf of the Chief Surveillance Commissioner of the review of any matter<sup>8</sup>, and the making of a report to the Chief Surveillance Commissioner about the matter reviewed<sup>9</sup>.

1 As to such functions, and as to the appointment of the Chief Surveillance Commissioner, see PARA 486 ante.

2 Regulation of Investigatory Powers Act 2000 s 62(1)(a). This power is expressed to be so far as the powers and duties referred to are not required to be kept under review by the Interception of Communications Commissioner, the Intelligence Services Commissioner or the Investigatory Powers Commissioner for Northern Ireland: see s 62(1). As to the Interception of Communications Commissioner see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 524-526; and as to the Intelligence Services Commissioner see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 476.

3 As to the Secretary of State see PARA 107 note 15 ante.

4 Regulation of Investigatory Powers Act 2000 s 62(2). For the meaning of 'subordinate legislation' see PARA 168 note 20 ante; definition applied by the Regulation of Investigatory Powers Act 2000 s 81(1).

5 Ibid s 63(1). A person must not be appointed as an Assistant Surveillance Commissioner unless he holds or has held office as a judge of the Crown Court or a circuit judge; a sheriff in Scotland; or a county court judge in Northern Ireland: s 63(2). The provisions of the Police Act 1997 s 91(3)-(8) (see PARA 486 ante) apply in relation to a person so appointed as they apply in relation to a person appointed under s 91: Regulation of Investigatory Powers Act 2000 s 63(5). 'Ordinary Surveillance Commissioner' means a Surveillance Commissioner other than the Chief Surveillance Commissioner: s 81(1). As to Surveillance Commissioners see PARA 486 ante.

6 *Ie* under *ibid* s 62(1): see the text to notes 1-2 *supra*.

7 Ibid s 63(3)(a).

8 Ibid s 63(4)(a).

9 Ibid s 63(4)(b).

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#### **492. Codes of practice.**

The Secretary of State<sup>1</sup> must issue one or more codes of practice relating to the exercise and performance of the powers and duties (excluding any power to make subordinate legislation<sup>2</sup>) conferred or imposed, otherwise than on the Surveillance Commissioners, by or under Part II of the Regulation of Investigatory Powers Act 2000<sup>3</sup>. Before issuing a code of practice the



Secretary of State must prepare and publish a draft of that code<sup>4</sup> and consider any representations made to him about the draft<sup>5</sup>. The Secretary of State may incorporate in the code finally issued any modifications made by him to the draft after its publication<sup>6</sup>. The Secretary of State must lay before both Houses of Parliament every such draft code of practice prepared and published by him<sup>7</sup>; and a code of practice issued by the Secretary of State must not be brought into force except in accordance with an order made by the Secretary of State<sup>8</sup>. The Secretary of State may from time to time revise the whole or any part of a code issued under these provisions<sup>9</sup>, and issue the revised code<sup>10</sup>.

A person exercising or performing any power or duty in relation to which provision may be made by a code of practice must, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force<sup>11</sup>. A failure on the part of any person to comply with any provision of a code of practice for the time being in force does not of itself render him liable to any criminal or civil proceedings<sup>12</sup>.

A code of practice in force at any time is admissible in evidence in any criminal or civil proceedings<sup>13</sup>. If any provision of an issued or revised code of practice appears to certain persons<sup>14</sup> to be relevant to any question arising in proceedings before them or in connection with the exercise of their jurisdiction or the carrying out of their functions, in relation to a time when it was in force, that provision of the code must be taken into account in determining that question<sup>15</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 For the meaning of 'subordinate legislation' see PARA 168 note 20 ante.

3 Regulation of Investigatory Powers Act 2000 s 71(1), (2)(a). This power applies also to codes of practice relating to the exercise and performance of the powers and duties under the Police Act 1997 Pt III (ss 91-108) (as amended) (see PARA 483 et seq ante): see the Regulation of Investigatory Powers Act 2000 s 71(1), (2)(c). As to the Surveillance Commissioners see PARAS 486, 491 ante.

4 Ibid s 71(3)(a).

5 Ibid s 71(3)(b).

6 Ibid s 71(3).

7 Ibid s 71(4).

8 Ibid s 71(5). The power of the Secretary of State to make such an order is exercisable by statutory instrument: s 78(1), (2). An order may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the bringing into force of the code brought into force by that order: s 71(6). An order may make different provisions for different cases and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). The Secretary of State must not make an order containing provision for any of the purposes of s 71 unless a draft of the order has been laid before Parliament and approved by a resolution of each House: s 71(9). A statutory instrument which contains an order but which does not contain an order a draft of which has been approved for the purposes of s 71(9) is subject to annulment in pursuance of a resolution of either House of Parliament: s 78(3) (amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 78, 80). As to the orders that have been made see the Regulation of Investigatory Powers (Interception of Communications: Code of Practice) Order 2002, SI 2002/1693; the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Code of Practice) Order 2002, SI 2002/1932; and the Regulation of Investigatory Powers (Covert Surveillance: Code of Practice) Order 2002, SI 2002/1933.

9 Regulation of Investigatory Powers Act 2000 s 71(7)(a).

10 Ibid s 71(7)(b). The provisions of s 71(3)-(6) (see the text to notes 4-8 supra) apply (with appropriate modifications) in relation to the issue of any revised code as they apply in relation to the first issue of such a code: s 71(8).

11 Ibid s 72(1).

12 Ibid s 72(2). 'Criminal proceedings' includes:

- 20 (1) proceedings in the United Kingdom or elsewhere before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957;
- 21 (2) proceedings before the Courts-Martial Appeal Court; and
- 22 (3) proceedings before a standing civilian court,

and references to criminal prosecutions must be construed accordingly: Regulation of Investigatory Powers Act 2000 s 81(1), (4). 'Civil proceedings' means any proceedings in or before any court or tribunal that are not criminal proceedings: s 81(1).

13 Ibid s 72(3).

14 The persons are: (1) the court or tribunal conducting any civil or criminal proceedings (ibid s 72(4)(a)); (2) the tribunal established under s 65 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS) (s 72(4)(b)); (3) a relevant Commissioner carrying out any of his functions under the Regulation of Investigatory Powers Act 2000 (s 72(4)(c)); (4) a Surveillance Commissioner carrying out his functions under the Regulation of Investigatory Powers Act 2000 or the Police Act 1997 (see PARA 486 ante) (Regulation of Investigatory Powers Act 2000 s 72(4)(d)); or (5) any Assistant Surveillance Commissioner carrying out any functions of his under s 63 (see PARA 491 ante) (s 72(4)(e)). 'Relevant Commissioner' means the Interception of Communications Commissioner, the Intelligence Services Commissioner or the Investigatory Powers Commissioner for Northern Ireland: s 72(5).

15 See ibid s 72(4). See *R v Harmes* [2006] EWCA Crim 928, [2006] All ER (D) 107 (May), in which the court stressed the importance of careful compliance with the requirements of the Act and code of practice stating that failure to do so would frustrate the purpose of the Act.

## UPDATE

### 492 Codes of practice

NOTE 3--2000 Act s 71(2)(c) amended: Serious Crime Act 2007 Sch 12 para 25.

NOTE 12--Regulation of Investigatory Powers Act 2000 s 81(4) amended: Armed Forces Act 2006 Sch 16 para 175(3).

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## (ii) Authorisation of Surveillance and Human Intelligence Sources

### 493. Lawful surveillance.

Conduct to which Part II of the Regulation of Investigatory Powers Act 2000 applies<sup>1</sup> is lawful for all purposes if: (1) an authorisation<sup>2</sup> confers an entitlement to engage in that conduct on the person whose conduct it is<sup>3</sup>; and (2) his conduct is in accordance with the authorisation<sup>4</sup>. The conduct that may be authorised includes conduct outside the United Kingdom<sup>5</sup>. A person is not subject to any civil liability in respect of any conduct of his which is incidental to any conduct that is lawful by virtue of these provisions<sup>6</sup>, and is not itself conduct an authorisation or warrant for which is capable of being granted under a relevant enactment<sup>7</sup> and might reasonably have been expected to have been sought in the case in question<sup>8</sup>.

These provisions also apply, in certain circumstances, where conduct is authorised by equivalent Scottish legislation and it is necessary to carry out some or all such conduct outside Scotland<sup>9</sup>.

- 1   le the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended). As to such conduct see PARA 489 ante.
- 2   le under *ibid* Pt II (as amended). As to authorisations see PARA 494 et seq post.
- 3   *Ibid* s 27(1)(a).
- 4   *Ibid* s 27(1)(b). As to challenges to the admissibility of evidence obtained by conduct to which the Act applies see *R v Hardy* [2002] EWCA Crim 3012, [2003] 1 CR App Rep 494, [2002] All ER (D) 464 (Oct); *R v Grant* [2005] EWCA Crim 1089, [2006] QB 60, [2005] Crim LR 955; *R v Brett* [2005] EWCA Crim 983, [2005] All ER (D) 302 (Apr).
- 5   Regulation of Investigatory Powers Act 2000 s 27(3). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.
- 6   *Ibid* s 27(2)(a).
- 7   'Relevant enactment' means: (1) an enactment contained in the Regulation of Investigatory Powers Act 2000; (2) the Intelligence Services Act 1994 s 5 (warrants for the intelligence services: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 474); or (3) an enactment contained in the Police Act 1997 Pt III (ss 92-108) (powers of the police and of customs officers: see PARA 483 et seq ante): Regulation of Investigatory Powers Act 2000 s 27(4).
- 8   *Ibid* s 27(2)(b).
- 9   See *ibid* s 76.

## UPDATE

### 493 Lawful surveillance

NOTE 7--2000 Act s 27(4) amended: Serious Crime Act 2007 Sch 12 para 9.

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#### 494. Authorisation of directed surveillance.

Designated persons<sup>1</sup> each have power to grant authorisations for the carrying out of directed surveillance<sup>2</sup>. A person must not grant an authorisation for the carrying out of directed surveillance unless he believes: (1) that the authorisation is necessary<sup>3</sup>; and (2) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out<sup>4</sup>. An authorisation is necessary if it is necessary: (a) in the interests of national security<sup>5</sup>; (b) for the purpose of preventing or detecting crime or of preventing disorder<sup>6</sup>; (c) in the interests of the economic well-being of the United Kingdom<sup>7</sup>; (d) in the interests of public safety<sup>8</sup>; (e) for the purpose of protecting public health<sup>9</sup>; (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department<sup>10</sup>; or (g) for any purpose (not falling within heads (a) to (f) above) which is specified for these purposes by an order made by the Secretary of State<sup>11</sup>.

The conduct that is authorised by an authorisation for the carrying out of directed surveillance is any conduct that: (i) consists in the carrying out of directed surveillance of any such description as is specified in the authorisation<sup>12</sup>; and (ii) is carried out in the circumstances described in the authorisation and for the purposes of the investigation or operation specified or described in the authorisation<sup>13</sup>.

1 The persons designated for the purposes of the Regulation of Investigatory Powers Act 2000 s 28. As to such persons see PARA 496 post.

2 Ibid s 28(1). This provision is expressed to be subject to ss 29-48: see PARAS 495-511 post. For the meaning of 'directed surveillance' see PARA 489 ante.

3 Ibid s 28(2)(a).

4 Ibid s 28(2)(b).

5 Ibid s 28(3)(a).

6 Ibid s 28(3)(b). 'Detecting crime' includes:

23 (1) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed; and

24 (2) the apprehension of the person by whom any crime was committed,

and any reference to preventing or detecting serious crime must be construed accordingly: s 81(5). References to crime are references to conduct which constitutes one or more criminal offences or is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom would constitute one or more criminal offences; and references to serious crime are references to crime that satisfies the test in s 81(3)(a) or (b): s 81(2). Those tests are: (a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more (s 81(3)(a)); (b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose (s 81(3)(b)). As from a day to be appointed s 81(3)(a) is amended so as to refer, in relation to England and Wales, to the age of 18: see s 81(3)(a) (prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 para 211). At the date at which this volume states the law no such day had been appointed. For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

7 Regulation of Investigatory Powers Act 2000 s 28(3)(c).

8 Ibid s 28(3)(d).

9 Ibid s 28(3)(e).

10 Ibid s 28(3)(f).

11 Ibid s 28(3)(g). The Secretary of State must not make such an order unless a draft of the order has been laid before Parliament and approved by a resolution of each House: s 28(5). The power of the Secretary of State to make such an order is exercisable by statutory instrument: s 78(1), (2). A statutory instrument which contains any such order but which does not contain an order a draft of which has been approved for the purposes of s 28(5) is subject to annulment in pursuance of a resolution of either House of Parliament: s 78(3). An order may make different provisions for different cases and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 107 note 15 ante.

12 Ibid s 28(4)(a).

13 Ibid s 28(4)(b).

## UPDATE

### 494 Authorisation of directed surveillance

NOTES 5, 6--See *Re McE*; *Re M*; *Re C (AP)* [2009] UKHL 15, [2009] 4 All ER 335.

Authorisation of Surveillance and Human Intelligence Sources/495. Authorisation of covert human intelligence sources.

#### **495. Authorisation of covert human intelligence sources.**

Designated persons<sup>1</sup> each have power to grant authorisations for the conduct or the use of a covert human intelligence source<sup>2</sup>. A person must not grant an authorisation for the conduct or the use of a covert human intelligence source unless he believes: (1) that the authorisation is necessary<sup>3</sup>; (2) that the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use<sup>4</sup>; and (3) that arrangements exist for the source's case that satisfy the specified requirements<sup>5</sup> and such other requirements as may be imposed by order made by the Secretary of State<sup>6</sup>. An authorisation is necessary if it is necessary: (a) in the interests of national security<sup>7</sup>; (b) for the purpose of preventing or detecting crime or of preventing disorder<sup>8</sup>; (c) in the interests of the economic well-being of the United Kingdom<sup>9</sup>; (d) in the interests of public safety<sup>10</sup>; (e) for the purpose of protecting public health<sup>11</sup>; (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department<sup>12</sup>; or (g) for any purpose (not falling within heads (a) to (f) above) which is specified for these purposes by an order made by the Secretary of State<sup>13</sup>.

The conduct that is authorised by an authorisation for the conduct or the use of a covert human intelligence source is any conduct that: (i) is comprised in any such activities involving conduct of a covert human intelligence source, or the use of a covert human intelligence source, as are specified or described in the authorisation<sup>14</sup>; (ii) consists in conduct by or in relation to the person who is so specified or described as the person to whose actions as a covert human intelligence source the authorisation relates<sup>15</sup>; and (iii) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described<sup>16</sup>.

The Secretary of State may by order prohibit the authorisation under these provisions of any such conduct or uses of covert human intelligence sources as may be described in the order<sup>17</sup>, and impose requirements, in addition to those provided for by heads (1) to (3) above, that must be satisfied before an authorisation is granted for any such conduct or uses of covert human intelligence sources as may be so described<sup>18</sup>.

1    le persons designated for the purposes of the Regulation of Investigatory Powers Act 2000 s 29. As to such persons see PARA 496 post.

2    Ibid s 29(1). This provision is expressed to be subject to ss 30-48: see PARAS 496-511 post. For the meaning of 'covert human intelligence source' see PARA 489 ante.

3    Ibid s 29(2)(a). See *R v Brett* [2005] EWCA Crim 983, [2005] All ER (D) 302 (Apr).

4    Regulation of Investigatory Powers Act 2000 s 29(2)(b).

5    For these purposes, there are arrangements for the source's case that satisfy the specified requirements if such arrangements are in force as are necessary for ensuring: (1) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have day-to-day responsibility for dealing with the source on behalf of that authority, and for the source's security and welfare (ibid s 29(5)(a)); (2) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source (s 29(5)(b)); (3) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the source (s 29(5)(c)); (4) that the records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for these purposes in regulations made by the Secretary of State (s 29(5)(d)); and (5) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons (s 29(5)(e)). 'Relevant investigating authority', in relation to an authorisation for the conduct or the use of an individual as a covert human intelligence source, means (subject to s 29(9)) the public authority for whose benefit the activities of that individual as such a source are to take place: s 29(8). In

the case of any authorisation for the conduct or the use of a covert human intelligence source whose activities are to be for the benefit of more than one public authority, the references in s 29(5) to the relevant investigating authority are references to one of them (whether or not the same one in the case of each reference): s 29(9). 'Public authority' means any public authority within the meaning of the Human Rights Act 1998 s 6 (acts of public authorities: see CONSTITUTIONAL LAW AND HUMAN RIGHTS) other than a court or tribunal: Regulation of Investigatory Powers Act 2000 s 81(1).

The power of the Secretary of State to make any regulations or order is exercisable by statutory instrument: s 78(1), (2). A statutory instrument containing any regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 78(4). Any regulations or order may make different provisions for different cases and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). As to the regulations that have been made see the Regulation of Investigatory Powers (Source Records) Regulations 2000, SI 2000/2725. As to the Secretary of State see PARA 107 note 15 ante.

6 Regulation of Investigatory Powers Act 2000 s 29(2)(c). As to the making of orders see note 5 supra. As to the order that has been made see the Regulation of Investigatory Powers (Juveniles) Order 2000, SI 2000/2793.

7 Regulation of Investigatory Powers Act 2000 s 29(3)(a).

8 Ibid s 29(3)(b). For the meaning of 'crime', and as to the meaning of 'detecting crime', see PARA 494 note 6 ante.

9 Ibid s 29(3)(c). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

10 Ibid s 29(3)(d).

11 Ibid s 29(3)(e).

12 Ibid s 29(3)(f).

13 Ibid s 29(3)(g). The Secretary of State must not make such an order unless a draft of the order has been laid before Parliament and approved by a resolution of each House: s 29(6). A statutory instrument which contains any order made under s 29(6) but which does not contain an order a draft of which has been approved for the purposes of that provision is subject to annulment in pursuance of a resolution of either House of Parliament: s 78(3). As to the making of orders see note 5 supra. At the date at which this volume states the law no order had been made for these purposes.

14 Ibid s 29(4)(a).

15 Ibid s 29(4)(b).

16 Ibid s 29(4)(c).

17 Ibid s 29(7)(a).

18 Ibid s 29(7)(b). As to the making of orders see note 5 supra. As to the order that has been made see the Regulation of Investigatory Powers (Juveniles) Order 2000, SI 2000/2793.

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#### **496. Persons entitled to grant authorisations.**

The persons designated for the purposes of granting authorisations for the carrying out of directed surveillance<sup>1</sup>, or authorisations for the conduct or the use of a covert human intelligence source<sup>2</sup>, are the individuals holding such offices, ranks or positions with relevant public authorities<sup>3</sup> as are prescribed by an order made by the Secretary of State<sup>4</sup>. Such an order may impose restrictions: (1) on the authorisations<sup>5</sup> that may be granted by any individual holding an office, rank or position with a specified public authority<sup>6</sup>; and (2) on the

circumstances in which, or the purposes for which, such authorisations may be granted by any such individual<sup>7</sup>.

For the purposes of the grant of an authorisation that combines: (a) an authorisation for the carrying out of directed surveillance or for the conduct or the use of a covert human intelligence source<sup>8</sup>; and (b) an authorisation by the Secretary of State for the carrying out of intrusive surveillance<sup>9</sup>, the Secretary of State himself is a designated person<sup>10</sup>.

1    Ie authorisations under the Regulation of Investigatory Powers Act 2000 s 28: see PARA 494 ante. For the meaning of 'directed surveillance' see PARA 489 ante.

2    Ie authorisations under *ibid* s 29: see PARA 495 ante. For the meaning of 'covert human intelligence source' see PARA 489 ante.

3    As to the relevant public authorities for the purposes of *ibid* s 28 see s 30(4)(a), Sch 1 Pts I and II; and as to such authorities for the purposes of s 29 see s 30(4)(b), Sch 1 Pt I. An order made by the Secretary of State may amend Sch 1 by: (1) adding a public authority to Sch 1 Pt I or Pt II; (2) removing a public authority from Sch 1; (3) moving a public authority from one Part of Sch 1 to the other; (4) making any change consequential on any change in the name of a public authority specified in Sch 1: s 30(5). The Secretary of State must not make an order under s 30(5) containing any provision for adding any public authority to Sch 1 Pt I or Pt II, or moving any public authority from Sch 1 Pt II to Sch 1 Pt I, unless a draft of the order has been laid before Parliament and approved by a resolution of each House: s 30(7). A statutory instrument which contains an order made in exercise of this power but which does not contain an order a draft of which has been approved for the purposes of s 30(7) is subject to annulment in pursuance of a resolution of either House of Parliament: s 78(3). As to the making of orders and the orders made see note 4 *infra*. As to the Secretary of State see PARA 107 note 15 ante.

4    *Ibid* s 30(1), (6). Section 30(6) is expressed to be without prejudice to s 31 (which relates to the grant of authorisations for conduct in Northern Ireland). The power of the Secretary of State to make any order is exercisable by statutory instrument: s 78(1), (2). An order may make different provisions for different cases, and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). As to the orders that have been made see the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, SI 2000/2417; the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003, SI 2003/3171; the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2005, SI 2005/1084; and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2006, SI 2006/1874. As to the grant of authorisations see PARA 499 *et seq post*.

5    Ie under the Regulation of Investigatory Powers Act 2000 ss 28, 29: see PARAS 494-495 ante.

6    *Ibid* s 30(3)(a).

7    *Ibid* s 30(3)(b).

8    *Ibid* s 30(2)(a).

9    *Ibid* s 30(2)(b). For the meaning of 'intrusive surveillance' see PARA 489 ante. As to authorisations for intrusive surveillance see PARA 497 *post*.

10   *Ibid* s 30(2).

## UPDATE

### 496 Persons entitled to grant authorisations

NOTE 3--2000 Act Sch 1 Pt 1 amended: Serious Crime Act 2007 Sch 12 para 28; Health and Social Services Act 2008 Sch 5 para 72; SI 2007/3224; SI 2009/2748.

Authorisation of Surveillance and Human Intelligence Sources/497. Authorisation of intrusive surveillance.

#### **497. Authorisation of intrusive surveillance.**

The Secretary of State<sup>1</sup> and each of the senior authorising officers<sup>2</sup> has power to grant authorisations for the carrying out of intrusive surveillance<sup>3</sup>. Neither the Secretary of State nor any senior authorising officer may grant an authorisation for the carrying out of intrusive surveillance unless he believes: (1) that the authorisation is necessary<sup>4</sup>; and (2) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out<sup>5</sup>. An authorisation is necessary if it is necessary<sup>6</sup>: (a) in the interests of national security<sup>7</sup>; (b) for the purpose of preventing or detecting serious crime<sup>8</sup>; or (c) in the interests of the economic well-being of the United Kingdom<sup>9</sup>. The matters to be taken into account in considering whether the requirements of heads (1) and (2) above are satisfied in the case of any authorisation include whether the information which it is thought necessary to obtain by the authorised conduct could reasonably be obtained by other means<sup>10</sup>.

The conduct that is authorised by an authorisation for the carrying out of intrusive surveillance is any conduct that: (i) consists in the carrying out of intrusive surveillance of any such description as is specified in the authorisation<sup>11</sup>; (ii) is carried out in relation to the residential premises<sup>12</sup> specified or described in the authorisation or in relation to the private vehicle<sup>13</sup> so specified or described<sup>14</sup>; and (iii) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described<sup>15</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 The senior authorising officers are: (1) the chief constable of every police force maintained under the Police Act 1996 s 2 (police forces in England and Wales outside London: see PARA 136 ante); (2) the Metropolitan Police Commissioner and every assistant metropolitan police commissioner; (3) the City of London Police Commissioner; (4) the chief constable of every police force maintained under or by virtue of the Police (Scotland) Act 1967 s 1 (police forces for areas in Scotland); (5) the chief constable and the deputy chief constable of the Police Service of Northern Ireland; (6) the chief constable of the Ministry of Defence Police; (7) the Provost Marshal of the Royal Navy Regulating Branch; (8) the Provost Marshal of the Royal Military Police; (9) the Provost Marshal of the Royal Air Force Police; (10) the chief constable of the British Transport Police; (11) the Director General of the Serious Organised Crime Agency and any member of the staff of that Agency who is designated for these purposes by the Director General; (12) any officer of revenue and customs designated for these purposes by the Commissioners for Revenue and Customs; and (13) the chairman of the Office of Fair Trading: Regulation of Investigatory Powers Act 2000 s 32(6) (amended by the Police (Northern Ireland) Act 2000 s 78(2)(a), (b); the Enterprise Act 2002 s 199(1), (2)(b); the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 136; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). As to the Metropolitan Police Commissioner see PARA 183 ante; and as to assistant metropolitan police commissioners see PARA 186 ante. As to the City of London Police Commissioner see PARA 187 ante. As to the Ministry of Defence Police see PARA 120 et seq ante. As to the British Transport Police see PARA 129 ante. As to the Director General of the Serious Organised Crime Agency see PARA 437 ante. As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq. As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

3 Regulation of Investigatory Powers Act 2000 s 32(1). This provision is expressed to be subject to ss 33-48: see PARAS 499-511 post. For the meaning of 'intrusive surveillance' see PARA 489 ante.

4 Ibid s 32(2)(a).

5 Ibid s 32(2)(b).

6 In the case of an authorisation granted by the chairman of the Office of Fair Trading, the authorisation is necessary on grounds falling within ibid s 32(3) only if it is necessary for the purpose of preventing or detecting an offence under the Enterprise Act 2002 s 188 (cartel offence: see COMPETITION vol 18 (2009) PARA 319): Regulation of Investigatory Powers Act 2000 s 32(3A) (added by the Enterprise Act 2002 s 199(1), (2)(a)).

7 Regulation of Investigatory Powers Act 2000 s 32(3)(a).



- 8 Ibid s 32(3)(b). For the meaning of 'serious crime', and as to the meaning of 'detecting crime', see PARA 494 note 6 ante.
- 9 Ibid s 32(3)(c). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.
- 10 Ibid s 32(4).
- 11 Ibid s 32(5)(a).
- 12 For the meaning of 'residential premises' see PARA 489 note 11 ante.
- 13 For the meaning of 'private vehicle' see PARA 489 note 12 ante.
- 14 Regulation of Investigatory Powers Act 2000 s 32(5)(b).
- 15 Ibid s 32(5)(c).

## UPDATE

### 497 Authorisation of intrusive surveillance

NOTE 2--2000 Act s 32(6) further amended: Armed Forces Act 2006 s 378, Sch 16 para 170; Serious Crime Act 2007 Sch 12 para 10.

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### 498. Foreign surveillance operations.

Where: (1) a foreign police or customs officer<sup>1</sup> is carrying out relevant surveillance<sup>2</sup> outside the United Kingdom which is lawful under the law of the country or territory in which it is being carried out<sup>3</sup>; (2) circumstances arise by virtue of which the surveillance can for the time being be carried out only in the United Kingdom<sup>4</sup>; and (3) it is not reasonably practicable in those circumstances for a United Kingdom officer<sup>5</sup> to carry out the surveillance in the United Kingdom in accordance with an authorisation<sup>6</sup>, relevant surveillance carried out by the foreign police or customs officer in the United Kingdom during the permitted period<sup>7</sup> is lawful for all purposes if:

- 275 (a) the specified condition is satisfied<sup>8</sup>;
- 276 (b) the officer carries out the surveillance only in places to which members of the public have or are permitted to have access, whether on payment or otherwise<sup>9</sup>; and
- 277 (c) conditions specified in any order made by the Secretary of State with the consent of the Scottish Ministers are satisfied in relation to its carrying out<sup>10</sup>,

but no surveillance is lawful by virtue of heads (a) to (c) above if the officer subsequently seeks to stop and question the person in the United Kingdom in relation to the relevant crime<sup>11</sup>.

The officer is not to be subject to any civil liability in respect of any conduct of his which is incidental to any surveillance that is lawful by virtue of these provisions<sup>12</sup>; but a person designated by an order made by the Secretary of State may notify the officer that the surveillance is to cease being lawful by virtue thereof when he gives the notification<sup>13</sup>.

1 References to a foreign police or customs officer are to a police or customs officer who, in relation to a country or territory other than the United Kingdom, is an officer for the purposes of: (1) the Schengen Convention art 40; or (2) any other international agreement to which the United Kingdom is a party and which is specified for these purposes in an order made by the Secretary of State with the consent of the Scottish Ministers: Regulation of Investigatory Powers Act 2000 s 76A(10) (s 76A added by the Crime (International Co-operation) Act 2003 s 83). As to orders made for these purposes see note 10 infra. For the meaning of 'United Kingdom' see PARA 102 note 7 ante. The 'Schengen Convention' means the Convention implementing the Schengen Agreement of 14 June 1985: Regulation of Investigatory Powers Act 2000 s 76A(11) (as so added). As to the Secretary of State see PARA 107 note 15 ante. As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 'Relevant surveillance' means surveillance which is carried out in relation to a person who is suspected of having committed a relevant crime, and is, for the purposes of ibid Pt II (ss 26-48) (as amended), directed surveillance or intrusive surveillance: s 76A(2) (as added: see note 1 supra). For the meanings of 'directed surveillance' and 'intrusive surveillance' see PARA 489 ante. For the meaning of 'person' see PARA 489 note 7 ante. 'Relevant crime' means crime which falls within the Schengen Convention art 40(7), or is crime for the purposes of any other international agreement to which the United Kingdom is a party and which is specified for these purposes in an order made by the Secretary of State with the consent of the Scottish Ministers: Regulation of Investigatory Powers Act 2000 s 76A(3) (as so added). For the meaning of 'crime' see PARA 494 note 6 ante.

3 Ibid s 76A(1)(a) (as added: see note 1 supra).

4 Ibid s 76A(1)(b) (as added: see note 1 supra).

5 'United Kingdom officer' means: (1) a member of a police force; (2) a member of the staff of the Serious Organised Crime Agency; (3) a member of the Scottish Crime Squad (within the meaning of the Regulation of Investigatory Powers (Scotland) Act 2000); (4) a police member of the Scottish Crime and Drug Enforcement Agency appointed in accordance with the Police, Public Order and Criminal Justice (Scotland) Act 2006 Sch 2 para 7; (4) an officer of revenue and customs: Regulation of Investigatory Powers Act 2000 s 76A(11) (as added (see note 1 supra); and amended by the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 131, 154(1), (3), Sch 17 Pt 2; the Police, Public Order and Criminal Justice (Scotland) Act 2006 s 101, Sch 6 para 8; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). 'Police force' means any of the following: (a) any police force maintained under the Police Act 1996 s 2 (police forces in England and Wales outside London: see PARA 136 ante); (b) the metropolitan police force; (c) the City of London police force; (d) any police force maintained under or by virtue of the Police (Scotland) Act 1967 s 1; (e) the Police Service of Northern Ireland; (f) the Ministry of Defence Police; (g) the Royal Navy Regulating Branch; (h) the Royal Military Police; (i) the Royal Air Force Police; (j) the British Transport Police: Regulation of Investigatory Powers Act 2000 s 81(1) (definition amended by the Police (Northern Ireland) Act 2000 s 78(2)(f)). As to the Serious Organised Crime Agency see PARA 430 et seq ante. As to the metropolitan police force see PARA 137 ante. As to the City of London police force see PARA 138 ante. As to the Ministry of Defence police force see PARA 120 et seq ante. As to the British Transport Police see PARA 129 ante.

6 Regulation of Investigatory Powers Act 2000 s 76A(1)(c) (as added: see note 1 supra). The text refers to authorisation under Pt II (as amended) or the Regulation of Investigatory Powers (Scotland) Act 2000. As to authorisations see PARAS 493-497 ante.

7 'The permitted period' means the period of five hours beginning with the time when the officer enters the United Kingdom: Regulation of Investigatory Powers Act 2000 s 76A(7) (as added: see note 1 supra).

8 Ibid s 76A(4)(a) (as added: see note 1 supra). The specified condition is satisfied if, immediately after the officer enters the United Kingdom: (1) he notifies a person designated by the Director General of the Serious Organised Crime Agency of that fact; and (2) (if the officer has not done so before) he requests an application to be made for an authorisation under Pt II (as amended) or under the Regulation of Investigatory Powers (Scotland) Act 2000 for the carrying out of the surveillance: s 76A(6) (as so added; and amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 154(1), (2)).

9 Regulation of Investigatory Powers Act 2000 s 76A(4)(b) (as added: see note 1 supra).

10 Ibid s 76A(4)(c) (as added: see note 1 supra). The Secretary of State is not to make such an order unless a draft of the order has been laid before Parliament and approved by a resolution of each House: s 76A(9) (as so added). Any power of the Secretary of State to make an order is exercisable by statutory instrument: s 78(1), (2). A statutory instrument which contains an order but which does not contain an order a draft of which has been approved for the purposes of s 76A(9) (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 78(3). An order may make different provisions for different cases and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). As to the order that has been made see the Regulation of Investigatory Powers (Foreign Surveillance Operations) Order 2004, SI 2004/1128.

11 Regulation of Investigatory Powers Act 2000 s 76A(4) (as added: see note 1 supra). The Serious Organised Crime and Police Act 2005 ss 28, 29 apply to a person carrying out surveillance under the Regulation of Investigatory Powers Act 2000 s 76A (as added): see PARAS 459-460 ante.

12 Ibid s 76A(5) (as added: see note 1 supra).

13 Ibid s 76A(8) (as added: see note 1 supra). As to orders made for these purposes see note 10 supra.

## **UPDATE**

### **498 Foreign surveillance operations**

NOTE 5--Definition of 'United Kingdom officer' in 2000 Act s 76A(11) further amended: Serious Crime Act 2007 Sch 12 para 26.

Now, for 'Royal Navy Regulating Branch' read 'Royal Navy Police': 2000 Act s 81(1) (amended by Armed Forces Act 2006 s 378, Sch 16 para 175(c)).

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### **(iii) Police and Customs Authorisations**

#### **499. Rules for the grant of authorisations.**

In relation to authorisations for the carrying out of directed surveillance<sup>1</sup> or authorisations for the conduct or the use of a covert human intelligence source<sup>2</sup>, a person who is a designated person<sup>3</sup> by reference to his office, rank or position with a police force<sup>4</sup> must not grant an authorisation except on an application made by a member of the same force<sup>5</sup>, a person who is a designated person by reference to his office or position with the Serious Organised Crime Agency must not grant an authorisation except on an application made by a member of the staff of the Agency<sup>6</sup>, and a person who is designated by reference to his office, rank or position with the Commissioners for Revenue and Customs must not grant an authorisation except on an application made by an officer of revenue and customs<sup>7</sup>.

A person who is a senior authorising officer<sup>8</sup> by reference to a police force must not grant an authorisation for the carrying out of intrusive surveillance except<sup>9</sup> on an application made by a member of the same force<sup>10</sup>, and, in the case of an authorisation for the carrying out of intrusive surveillance in relation to any residential premises<sup>11</sup>, where those premises are in the area of operation of that force<sup>12</sup>; the Director General of the Serious Organised Crime Agency or a person designated by him<sup>13</sup> must not grant an authorisation for the carrying out of intrusive surveillance except on an application made by a member of the staff of the Agency<sup>14</sup>; a person who is a senior authorising officer by virtue of a designation by the Commissioners for Revenue and Customs must not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of revenue and customs<sup>15</sup>; and the chairman of the Office of Fair Trading must not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of the Office of Fair Trading<sup>16</sup>.

A single authorisation may combine both:

278 (1) an authorisation granted<sup>17</sup> by, or on the application of, an individual who is a member of a police force, a member of the staff of the Serious Organised Crime

Agency, an officer of revenue and customs, or the chairman or an officer of the Office of Fair Trading<sup>18</sup>; and  
 279 (2) an authorisation given by, or on the application of, that individual under the Police Act 1997<sup>19</sup>,

but the statutory provisions<sup>20</sup> that are applicable in the case of each of the authorisations apply separately in relation to the part of the combined authorisation to which they are applicable<sup>21</sup>.

1 The authorisations under the Regulation of Investigatory Powers Act 2000 s 28: see PARA 494 ante. For the meaning of 'directed surveillance' see PARA 489 ante.

2 The authorisations under ibid s 29: see PARA 495 ante. For the meaning of 'covert human intelligence source' see PARA 489 ante.

3 As to designated persons see PARA 496 ante.

4 For the meaning of 'police force' see PARA 498 note 5 ante.

5 See the Regulation of Investigatory Powers Act 2000 s 33(1) (amended by the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 131, 137(1), (2), Sch 17 Pt 2).

6 See the Regulation of Investigatory Powers Act 2000 s 33(1A) (added by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 137(1), (3)). As to the Serious Organised Crime Agency see PARA 430 et seq ante.

7 See the Regulation of Investigatory Powers Act 2000 s 33(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

8 'Senior authorising officer' means a person who by virtue of the Regulation of Investigatory Powers Act 2000 s 32(6) (as amended) (see PARA 497 ante) is a senior authorising officer for the purposes of s 32 (as amended): s 48(1).

9 Ibid s 33(3) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 137(1), (4)(a), Sch 17 Pt 2). For the meaning of 'intrusive surveillance' see PARA 489 ante.

10 Regulation of Investigatory Powers Act 2000 s 33(3)(a) (s 33(3)(a), (b) amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 137(1), (4)(b), Sch 17 Pt 2).

11 For the meaning of 'residential premises' see PARA 489 note 11 ante.

12 Regulation of Investigatory Powers Act 2000 s 33(3)(b) (as amended: see note 10 supra). For these purposes: (1) the area of operation of a police force maintained under the Police Act 1996 s 2 (see PARA 136 ante), of the metropolitan police force, of the City of London police force or of a police force maintained under or by virtue of the Police (Scotland) Act 1967 s 1 is the area for which that force is maintained; (2) the area of operation of the Police Service of Northern Ireland is Northern Ireland; (3) residential premises are in the area of operation of the Ministry of Defence Police if they are premises where the members of that police force, under the Ministry of Defence Police Act 1987 s 2 (see PARA 120 ante), have the powers and privileges of a constable; (4) residential premises are in the area of operation of the Royal Navy Regulating Branch, the Royal Military Police or the Royal Air Force Police if they are premises owned or occupied by, or used for residential purposes by, a person subject to service discipline; (5) the area of operation of the British Transport Police is the United Kingdom; and references to the United Kingdom or to any part or area of the United Kingdom include any adjacent waters within the seaward limits of the territorial waters of the United Kingdom: s 33(6) (amended by the Police (Northern Ireland) Act 2000 s 78(2)(f); and the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 137(1), (7), Sch 17 Pt 2). A person is subject to service discipline: (a) in relation to the Royal Navy Regulating Branch, if he is subject to the Naval Discipline Act 1957 or is a civilian to whom Pts I and II of that Act for the time being apply by virtue of s 118; (b) in relation to the Royal Military Police, if he is subject to military law or is a civilian to whom Pt II of the Army Act 1955 for the time being applies by virtue of s 209; and (c) in relation to the Royal Air Force Police, if he is subject to air force law or is a civilian to whom Pt II of the Air Force Act 1955 for the time being applies by virtue of s 209: Regulation of Investigatory Powers Act 2000 s 33(7). As to the metropolitan police force see PARA 137 ante. As to the City of London police force see PARA 138 ante. As to the British Transport Police see PARA 129 ante. For the meaning of 'United Kingdom' see PARA 102 note 7 ante. As to territorial waters see WATER AND WATERWAYS vol 100 (2009) PARA 31.

13 The purposes of ibid s 32(6) (as amended): see PARA 497 ante.

14 Ibid s 33(3A) (added by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 137(1), (5)).

15 Regulation of Investigatory Powers Act 2000 s 33(4) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50).

16 Regulation of Investigatory Powers Act 2000 s 33(4A) (added by the Enterprise Act 2002 s 199(1), (3)). As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

17 Ie under the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended).

18 Ibid s 33(5)(a) (amended by the Enterprise Act 2002 s 199(1), (4); the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 137(1), (6); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50).

19 Regulation of Investigatory Powers Act 2000 s 33(5)(b). The text refers to authorisation under the Police Act 1997 Pt III (ss 92-108) (as amended): see PARA 483 et seq ante.

20 Ie the Regulation of Investigatory Powers Act 2000 or the Police Act 1997.

21 Regulation of Investigatory Powers Act 2000 s 33(5).

## UPDATE

### 499 Rules for the grant of authorisations

TEXT AND NOTES 7, 15, 18--2000 Act s 33(2), (4) substituted, s 33(5)(a) further amended: Serious Crime Act 2007 Sch 12 para 11.

NOTE 12--2000 Act s 32(6), (7) amended: Armed Forces Act 2006 Sch 16 para 171.

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### 500. Grant of authorisation in the senior officer's absence.

In the case of an application for an authorisation for the carrying out of intrusive surveillance<sup>1</sup> where: (1) the application is one made by a member of a police force<sup>2</sup>, a member of the staff of the Serious Organised Crime Agency, an officer of the Office of Fair Trading or an officer of revenue and customs<sup>3</sup>; and (2) the case is urgent<sup>4</sup>, if:

280 (a) it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by any person who is a senior authorising officer<sup>5</sup> by reference to the force or Agency in question or, as the case may be, as chairman of the Office of Fair Trading or by virtue of a designation by the Commissioners for Revenue and Customs<sup>6</sup>; and

281 (b) it also not reasonably practicable, having regard to the urgency of the case, for the application to be considered by a person (if there is one) who is entitled, as a designated deputy<sup>7</sup> of a senior authorising officer, to exercise the functions in relation to that application of such an officer<sup>8</sup>,

the application may be made to and considered by any person who is entitled to act for any senior authorising officer who would have been entitled to consider the application<sup>9</sup>.

A person who considers an application under these provisions has the same power to grant an authorisation as the person for whom he is entitled to act<sup>10</sup>.

1 For the meaning of 'intrusive surveillance' see PARA 489 ante.

2 For the meaning of 'police force' see PARA 498 note 5 ante.

3 Regulation of Investigatory Powers Act 2000 s 34(1)(a) (amended by the Enterprise Act 2002 s 199(1), (5) (a); the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 138(1), (2); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). As to the Serious Organised Crime Agency see PARA 430 et seq ante. As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq. As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

4 Regulation of Investigatory Powers Act 2000 s 34(1)(b).

5 For the meaning of 'senior authorising officer' see PARA 499 note 8 ante.

6 Regulation of Investigatory Powers Act 2000 s 34(2)(a) (amended by the Enterprise Act 2002 s 199(1), (5) (b); the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 138(1), (3); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50).

7 'Designated deputy': (1) in relation to the chief constable for a police force in England and Wales, means the person who is the appropriate deputy chief constable for the purposes of the Police Act 1996 s 12A(1) (as added) (see PARA 178 ante), or a person holding the rank of assistant chief constable who is designated to act under s 12A(2) (as added); (2) in relation to the chief constable for a police force in Scotland, means a person holding the rank of deputy chief constable and, where there is more than one person in the police force who holds that rank, who is designated as the officer having the powers and duties conferred on a deputy chief constable by the Police (Scotland) Act 1967 s 5A(1) (as added), or a person holding the rank of assistant chief constable who is designated to act under s 5A(2) (as added); (3) in relation to the City of London Police Commissioner, means a person authorised to act under the City of London Police Act 1839 s 25: Regulation of Investigatory Powers Act 2000 s 34(6) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 138(1), (6), Sch 17 Pt 2; and the Police and Justice Act 2006 s 52, Sch 14 para 39).

8 Regulation of Investigatory Powers Act 2000 s 34(2)(b).

9 Ibid s 34(2). For these purposes: (1) a person is entitled to act for the chief constable of a police force maintained under the Police Act 1996 s 2 (see PARA 136 ante) if he holds the rank of assistant chief constable in that force; (2) a person is entitled to act for the Metropolitan Police Commissioner, or for an assistant metropolitan police commissioner, if he holds the rank of commander in the metropolitan police force; (3) a person is entitled to act for the City of London Police Commissioner if he holds the rank of commander in the City of London police force; (4) a person is entitled to act for the chief constable of a police force maintained under or by virtue of the Police (Scotland) Act 1967 s 1 if he holds the rank of assistant chief constable in that force; (5) a person is entitled to act for the chief constable of the Police Service of Northern Ireland, or for the deputy chief constable of the Police Service of Northern Ireland, if he holds the rank of assistant chief constable in the Police Service of Northern Ireland; (6) a person is entitled to act for the chief constable of the Ministry of Defence Police if he holds the rank of deputy or assistant chief constable in that force; (7) a person is entitled to act for the Provost Marshal of the Royal Navy Regulating Branch if he holds the position of assistant Provost Marshal in that branch; (8) a person is entitled to act for the Provost Marshal of the Royal Military Police or the Provost Marshal of the Royal Air Force Police if he holds the position of deputy Provost Marshal in the police force in question; (9) a person is entitled to act for the chief constable of the British Transport Police if he holds the rank of deputy or assistant chief constable in that force; (10) a person is entitled to act for the Director General of the Serious Organised Crime Agency if he is a person designated for these purposes by that Director General as a person entitled so to act in an urgent case; (11) a person is entitled to act for a person who is a senior authorising officer by virtue of a designation by the Commissioners for Revenue and Customs, if he is designated for these purposes by those Commissioners as a person entitled so to act in an urgent case; (12) a person is entitled to act for the chairman of the Office of Fair Trading if he is an officer of that Office designated by it for these purposes as a person entitled so to act in an urgent case: Regulation of Investigatory Powers Act 2000 s 34(4) (amended by the Police (Northern Ireland) Act 2000 s 78(2)(a), (b); the Enterprise Act 2002 s 199(1), (5)(c); and the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 138(1), (4)). As to ranks in police forces see PARA 230 ante. As to the Ministry of Defence Police see PARA 120 et seq ante. As to the British Transport Police see PARA 129 ante.

10 Regulation of Investigatory Powers Act 2000 s 34(3).

## UPDATE

## 500 Grant of authorisation in the senior officer's absence

TEXT AND NOTES--2000 Act s 34 further amended: Serious Crime Act 2007 Sch 12 para 12.

NOTE 9--Now, for 'Royal Navy Regulating Branch' read 'Royal Navy Police', and for 'branch' read 'force': 2000 Act s 34(4) (amended by the Armed Forces Act 2006 s 378, Sch 16 para 172).

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### 501. Notification of authorisations for intrusive surveillance.

Where a person grants or cancels a police, Serious Organised Crime Agency, HM Revenue and Customs or Office of Fair Trading authorisation<sup>1</sup> for the carrying out of intrusive surveillance<sup>2</sup>, he must give notice that he has done so to an ordinary Surveillance Commissioner<sup>3</sup>. A notice of the grant of an authorisation must, as the case may be, either: (1) state that the approval of a Surveillance Commissioner is required<sup>4</sup> before the grant of the authorisation will take effect<sup>5</sup>; or (2) state that the case is one of urgency and set out the grounds on which the case is believed to be one of urgency<sup>6</sup>. Where a notice of the grant of an authorisation has been received by an ordinary Surveillance Commissioner, he must as soon as practicable scrutinise the authorisation<sup>7</sup> and, in a case where notice has been given in accordance with head (1) above, decide whether or not to approve the authorisation<sup>8</sup>.

1 A police, Serious Organised Crime Agency, HM Revenue and Customs or Office of Fair Trading authorisation is an authorisation granted by: (1) a person who is a senior authorising officer by reference to a police force or the Serious Organised Crime Agency; (2) a person who is a senior authorising officer by virtue of a designation by the Commissioners for Revenue and Customs; (3) the chairman of the Office of Fair Trading; or (4) a person who for the purposes of the Regulation of Investigatory Powers Act 2000 s 34 (as amended) (see PARA 500 ante) is entitled to act for a person falling within head (1), (2) or (3) supra: s 35(10) (amended by the Enterprise Act 2002 ss 199(1), (6), 278(2), Sch 26; the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 139(1), (3); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). For the meaning of 'senior authorising officer' see PARA 499 note 8 ante. For the meaning of 'police force' see PARA 498 note 5 ante. As to the Serious Organised Crime Agency see PARA 430 et seq ante. As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq. As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

2 For the meaning of 'intrusive surveillance' see PARA 489 ante. As to such authorisations see PARA 497 ante.

3 Regulation of Investigatory Powers Act 2000 s 35(1) (amended by the Enterprise Act 2002 s 199(1), (6)(a); the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 139(1), (2); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). For the meaning of 'ordinary Surveillance Commissioner' see PARA 491 note 5 ante. The notice: (1) must be given in writing as soon as reasonably practicable after the grant or, as the case may be, cancellation of the authorisation to which it relates; (2) must be given in accordance with any such arrangements made for these purposes by the Chief Surveillance Commissioner as are for the time being in force; and (3) must specify such matters as the Secretary of State may by order prescribe: Regulation of Investigatory Powers Act 2000 s 35(2). Any notice that is required to be given in writing may be given, instead, by being transmitted by electronic means: s 35(9). For the meaning of 'writing' see PARA 115 note 9 ante. As to the Chief Surveillance Commissioner see PARA 486 ante. As to the Secretary of State see PARA 107 note 15 ante.

The Secretary of State must not make an order under head (3) supra unless a draft of the order has been laid before Parliament and approved by a resolution of each House: s 35(5). Section 36(5) did not apply in the case of the order made on the first occasion on which the Secretary of State exercised his power to make such an order: s 35(6). The order made on that occasion was to cease to have effect at the end of the period of 40 days beginning with the day on which it was made unless, before the end of that period, it was approved by a

resolution of each House of Parliament: s 35(7). The order's ceasing to have effect was to be without prejudice to anything previously done or to the making of a new order; and in reckoning the period of 40 days no account was to be taken of any period during which Parliament was dissolved or prorogued or during which both Houses were adjourned for more than four days: s 35(8). The power of the Secretary of State to make any order is exercisable by statutory instrument: s 78(1), (2). A statutory instrument which contains an order, but which does not contain the order to which s 35(7) applies, is subject to annulment in pursuance of a resolution of either House of Parliament: s 78(3). An order may make different provisions for different cases and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). As to the order that has been made see the Regulation of Investigatory Powers (Notification of Authorisations etc) Order 2000, SI 2000/2563.

4    le by the Regulation of Investigatory Powers Act 2000 s 36 (as amended): see PARA 502 post.

5    Ibid s 35(3)(a).

6    Ibid s 35(3)(b).

7    Ibid s 35(4)(a).

8    Ibid s 35(4)(b).

## UPDATE

### 501 Notification of authorisations for intrusive surveillance

TEXT AND NOTES 1-3--2000 Act s 35(1), (10) further amended: Serious Crime Act 2007 Sch 12 para 13.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(3) SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES/(iii) Police and Customs Authorisations/502. Approval required for authorisations to take effect.

### 502. Approval required for authorisations to take effect.

Where an authorisation for the carrying out of intrusive surveillance<sup>1</sup> has been granted on the application of a member of a police force<sup>2</sup>, a member of the staff of the Serious Organised Crime Agency<sup>3</sup>, an officer of revenue and customs<sup>4</sup>, or an officer of the Office of Fair Trading<sup>5</sup>, the authorisation does not take effect until such time (if any) as: (1) the grant of the authorisation has been approved by an ordinary Surveillance Commissioner<sup>6</sup>; and (2) written notice of the Commissioner's decision to approve the grant of the authorisation has been given to the person who granted the authorisation<sup>7</sup>. Where the person who grants the authorisation believes that the case is one of urgency<sup>8</sup> and gives notice accordingly<sup>9</sup>, heads (1) and (2) above do not apply to the authorisation, and the authorisation has effect from the time of its grant<sup>10</sup>.

If an ordinary Surveillance Commissioner decides not to approve an authorisation, he must make a report of his findings to the most senior relevant person<sup>11</sup>.

1    For the meaning of 'intrusive surveillance' see PARA 489 ante. As to such authorisations see PARA 497 ante; and as to the notification of such authorisations see PARA 501 ante.

2    Regulation of Investigatory Powers Act 2000 s 36(1)(a). For the meaning of 'police force' see PARA 498 note 5 ante.

3    Ibid s 36(1)(b) (substituted by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 140(1), (2)). As to the Serious Organised Crime Agency see PARA 430 et seq ante.



4 Regulation of Investigatory Powers Act 2000 s 36(1)(d) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

5 Regulation of Investigatory Powers Act 2000 s 36(1)(e) (added by the Enterprise Act 2002 s 199(1), (7)(a)). As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.

6 Regulation of Investigatory Powers Act 2000 s 36(2)(a). For the meaning of 'ordinary Surveillance Commissioner' see PARA 491 note 5 ante.

7 Ibid s 36(2)(b). A Surveillance Commissioner must give his approval to the authorisation if, and only if, he is satisfied that there are reasonable grounds for believing that the requirements of s 32(2)(a), (b) (see PARA 497 ante) are satisfied in the case of the authorisation (s 36(4)(a)); and a Surveillance Commissioner who makes a decision as to whether or not the authorisation should be approved must, as soon as reasonably practicable after making that decision, give written notice of his decision to the person who granted the authorisation (s 36(4)(b)). Any notice that is required to be given in writing may be given, instead, by being transmitted by electronic means: s 36(8). For the meaning of 'writing' see PARA 115 note 9 ante.

8 Ibid s 36(3)(a).

9 Ibid s 36(3)(b). The notice referred to in the text is one given in accordance with s 35(3)(b): see PARA 501 ante.

10 Ibid s 36(3).

11 Ibid s 36(5). 'The most senior relevant person' means: (1) where the authorisation was granted by the senior authorising officer with any police force who is not someone's deputy, that senior authorising officer; (2) where the authorisation was granted by the Director General of the Serious Organised Crime Agency, that Director General; (3) where the authorisation was granted by a senior authorising officer with a police force who is someone's deputy, the senior authorising officer whose deputy granted the authorisation; (4) where the authorisation was granted by a person designated for the purposes of s 32(6)(k) (see PARA 497 note 2 head (11) ante), or by a person entitled to act for the Director General of the Serious Organised Crime Agency by virtue of s 34(4)(j) (see PARA 500 note 9 head (10) ante), that Director General; (5) where the authorisation was granted by a person entitled to act for a senior authorising officer under s 34(4)(a)-(i) (see PARA 500 note 9 heads (1)-(9) ante), the senior authorising officer in the force in question who is not someone's deputy; (6) where the authorisation was granted by an officer of revenue and customs, the officer for the time being designated for these purposes by a written notice given to the Chief Surveillance Commissioner by the Commissioners for Revenue and Customs; and (7) where the authorisation was granted by the chairman of the Office of Fair Trading or a person entitled to act for him by virtue of s 34(4)(m) (see PARA 500 note 9 head (12) ante), that chairman: s 36(6) (amended by the Enterprise Act 2002 ss 199(1), (7)(b), 278(2), Sch 26; the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 140(1), (3); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). For the meaning of 'senior authorising officer' see PARA 499 note 8 ante. The references in the Regulation of Investigatory Powers Act 2000 s 36(6) (as amended) to a person's deputy are references to the following: (a) in relation to a chief constable of a police force maintained under the Police Act 1996 s 2 (see PARA 136 ante), the City of London Police Commissioner, or a chief constable of a police force maintained under or by virtue of the Police (Scotland) Act 1967 s 1, to his designated deputy; (b) in relation to the Metropolitan Police Commissioner, to an assistant metropolitan police commissioner; and (c) in relation to the chief constable of the Police Service of Northern Ireland, to the deputy chief constable of the Police Service of Northern Ireland; and in this provision and the Regulation of Investigatory Powers Act 2000 s 36(6) (as amended) 'designated deputy' has the same meaning as in s 34 (see PARA 500 note 7 ante): s 36(7) (amended by the Police (Northern Ireland) Act 2000 s 78(2)(a), (b)). As to the Metropolitan Police Commissioner see PARA 183 ante; and as to assistant metropolitan police commissioners see PARA 186 ante. As to the City of London Police Commissioner see PARA 187 ante.

## UPDATE

### 502 Approval required for authorisations to take effect

TEXT AND NOTE 4--2000 Act s 36(1)(d) substituted: Serious Crime Act 2007 Sch 12 para 14(a).

NOTE 11--2000 Act s 36(6) further amended: 2007 Act Sch 12 para 14(b).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(3) SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES/(iii) Police and Customs Authorisations/503. Quashing of police and customs authorisations.

### **503. Quashing of police and customs authorisations.**

The following provisions apply where an authorisation for the carrying out of intrusive surveillance<sup>1</sup> has been granted on the application of a member of a police force<sup>2</sup>, a member of the staff of the Serious Organised Crime Agency<sup>3</sup>, an officer of revenue and customs<sup>4</sup>, or an officer of the Office of Fair Trading<sup>5</sup>.

Where an ordinary Surveillance Commissioner<sup>6</sup> is at any time satisfied that, at the time when the authorisation was granted or at any time when it was renewed, there were no reasonable grounds for believing that the statutory requirements<sup>7</sup> were satisfied, he may quash the authorisation with effect, as he thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation<sup>8</sup>. If an ordinary Surveillance Commissioner is satisfied at any time while the authorisation is in force that there are no longer any reasonable grounds for believing that those statutory requirements are satisfied in relation to the authorisation, he may cancel the authorisation with effect from such time as appears to him to be the time from which those requirements ceased to be so satisfied<sup>9</sup>. Where, in the case of any authorisation of which notice has been given on the grounds that the case is one of urgency<sup>10</sup>, an ordinary Surveillance Commissioner is at any time satisfied that, at the time of the grant or renewal of the authorisation to which that notice related, there were no reasonable grounds for believing that the case was one of urgency, he may quash the authorisation with effect, as he thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation<sup>11</sup>.

Where an ordinary Surveillance Commissioner quashes an authorisation, he may order the destruction of any records relating wholly or partly to information obtained by the authorised conduct after the time from which his decision takes effect<sup>12</sup>. Where an authorisation has ceased to have effect (otherwise<sup>13</sup> than by virtue of its being quashed)<sup>14</sup>, and an ordinary Surveillance Commissioner is satisfied that there was a time while the authorisation was in force when there were no reasonable grounds for believing that the statutory requirements<sup>15</sup> continued to be satisfied in relation to the authorisation<sup>16</sup>, he may order the destruction of any records relating, wholly or partly, to information obtained at such a time by the authorised conduct<sup>17</sup>. However, no order may be made for the destruction of any records required for pending criminal or civil proceedings<sup>18</sup>; and where an order for the destruction of records is made, the order does not become operative until such time (if any) as the period for appealing against the decision to make the order has expired<sup>19</sup>, and any appeal brought within that period has been dismissed by the Chief Surveillance Commissioner<sup>20</sup>.

Where an ordinary Surveillance Commissioner exercises a power conferred by these provisions<sup>21</sup>, he must, as soon as reasonably practicable, make a report of his exercise of that power and of his reasons for doing so to the most senior relevant person<sup>22</sup> and to the Chief Surveillance Commissioner<sup>23</sup>.

1 For the meaning of 'intrusive surveillance' see PARA 489 ante. As to such authorisations see PARA 497 ante; and as to the notification and approval of such authorisations see PARAS 501-502 ante.

2 Regulation of Investigatory Powers Act 2000 s 37(1)(a). For the meaning of 'police force' see PARA 498 note 5 ante.

3 Ibid s 37(1)(b) (substituted by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 141). As to the Serious Organised Crime Agency see PARA 430 et seq ante.

- 4 Regulation of Investigatory Powers Act 2000 s 37(1)(d) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.
- 5 Regulation of Investigatory Powers Act 2000 s 37(1)(e) (added by the Enterprise Act 2002 s 199(1), (8)). As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq.
- 6 For the meaning of 'ordinary Surveillance Commissioner' see PARA 491 note 5 ante.
- 7 Ie the requirements of the Regulation of Investigatory Powers Act 2000 s 32(2)(a), (b): see PARA 497 ante.
- 8 Ibid s 37(2).
- 9 Ibid s 37(3). No notice is required to be given under s 35(1) (see PARA 501 ante) in the case of a cancellation under s 37(3): s 37(10).
- 10 Ie notice in accordance with ibid s 35(3)(b): see PARA 501 ante.
- 11 Ibid s 37(4).
- 12 Ibid s 37(5). This provision is expressed to be subject to s 37(7): see the text to note 18 infra.
- 13 Ie otherwise than by virtue of ibid s 37(2) (see the text to notes 6-8 supra) or s 37(4) (see the text to notes 10-11 supra).
- 14 Ibid s 37(6)(a).
- 15 Ie the requirements of ibid s 32(2)(a), (b): see PARA 497 ante.
- 16 Ibid s 37(6)(b).
- 17 Ibid s 37(6). This provision is expressed to be subject to s 37(7): see the text to note 18 infra.
- 18 Ibid s 37(7). For the meanings of 'criminal proceedings' and 'civil proceedings' see PARA 492 note 12 ante.
- 19 Ibid s 37(9)(a).
- 20 Ibid s 37(9)(b). As to appeals see PARA 504 post. As to the Chief Surveillance Commissioner see PARA 486 ante.
- 21 Ie ibid s 37 (as amended).
- 22 Ibid s 37(8)(a). For the meaning of 'the most senior relevant person' see PARA 502 note 11 ante.
- 23 Ibid s 37(8)(b).

## **UPDATE**

### **503 Quashing of police and customs authorisations**

TEXT AND NOTE 4--2000 Act s 37(1)(d) substituted: Serious Crime Act 2007 Sch 12 para 15.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(3) SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES/(iii) Police and Customs Authorisations/504. Appeals against decisions by Surveillance Commissioners.

### **504. Appeals against decisions by Surveillance Commissioners.**

Any senior authorising officer<sup>1</sup> may appeal to the Chief Surveillance Commissioner<sup>2</sup> against any of the following: (1) any refusal of an ordinary Surveillance Commissioner<sup>3</sup> to approve an authorisation for the carrying out of intrusive surveillance<sup>4</sup>; (2) any decision of such a Commissioner to quash or cancel such an authorisation<sup>5</sup>; (3) any decision of such a Commissioner to make an order<sup>6</sup> for the destruction of records<sup>7</sup>.

An appeal must be brought within the period of seven days beginning with the day on which the refusal or decision appealed against is reported to the appellant<sup>8</sup>. The Chief Surveillance Commissioner, on an appeal, must allow the appeal if: (a) he is satisfied that there were reasonable grounds for believing that the statutory requirements<sup>9</sup> were satisfied in relation to the authorisation at the time in question<sup>10</sup>; and (b) he is not satisfied that the authorisation is one of which notice was given on the grounds that the case is one of urgency<sup>11</sup> without there being any reasonable grounds for believing that the case was one of urgency<sup>12</sup>. However, if, on an appeal falling within head (2) above, the Chief Surveillance Commissioner: (i) is satisfied that grounds exist which justify the quashing or cancellation<sup>13</sup> of the authorisation in question<sup>14</sup>; but (ii) considers that the authorisation should have been quashed or cancelled from a different time from that from which it was quashed or cancelled by the ordinary Surveillance Commissioner against whose decision the appeal is brought<sup>15</sup>, he may modify that Commissioner's decision to quash or cancel the authorisation, and any related decision for the destruction of records, so as to give effect to the decision<sup>16</sup> that he considers should have been made<sup>17</sup>. Where, on an appeal against a decision to quash or cancel an authorisation, the Chief Surveillance Commissioner allows the appeal, he must also quash any related order for the destruction of records relating to information obtained by the authorised conduct<sup>18</sup>.

Where the Chief Surveillance Commissioner has determined an appeal, he must give notice of his determination to both the person by whom the appeal was brought<sup>19</sup> and the ordinary Surveillance Commissioner whose decision was appealed against<sup>20</sup>. Where the determination of the Chief Surveillance Commissioner on an appeal is a determination to dismiss the appeal, he must make a report of his findings to those persons<sup>21</sup> and to the Prime Minister<sup>22</sup>. Subject to this<sup>23</sup>, the Chief Surveillance Commissioner must not give any reasons for any determination of his on an appeal<sup>24</sup>.

1 For the meaning of 'senior authorising officer' see PARA 499 note 8 ante. In the case of an authorisation granted by the designated deputy of a senior authorising officer or by a person who for the purposes of the Regulation of Investigatory Powers Act 2000 s 34 (as amended) (see PARA 500 ante) is entitled to act for a senior authorising officer, that designated deputy or person is also entitled to appeal: s 38(2). 'Designated deputy' has the same meaning as in s 34 (see PARA 500 note 7 ante): s 38(7).

2 As to the Chief Surveillance Commissioner see PARA 486 ante.

3 For the meaning of 'ordinary Surveillance Commissioner' see PARA 491 note 5 ante.

4 Regulation of Investigatory Powers Act 2000 s 38(1)(a). For the meaning of 'intrusive surveillance' see PARA 489 ante. As to the approval of such authorisations see PARA 502 ante.

5 Ibid s 38(1)(b). As to the quashing or cancellation of such authorisations see PARA 503 ante.

6 Ie under ibid s 37 (as amended): see PARA 503 ante.

7 Ibid s 38(1)(c).

8 Ibid s 38(3).

9 Ie the requirements of ibid s 32(2)(a), (b): see PARA 497 ante.

10 Ibid s 38(4)(a).

11 Ie notice in accordance with ibid s 35(3)(b): see PARA 501 ante.

12 Ibid s 38(4)(b).

- 13    Ie under ibid s 37: see PARA 503 ante.
- 14    Ibid s 38(5)(a).
- 15    Ibid s 38(5)(b).
- 16    Ie under ibid s 37: see PARA 503 ante.
- 17    Ibid s 38(5).
- 18    Ibid s 38(6).
- 19    Ibid s 39(1)(a).
- 20    Ibid s 39(1)(b).
- 21    Ibid s 39(2)(a).
- 22    Ibid s 39(2)(b). The Police Act 1997 s 107(3), (4) (reports to be laid before Parliament and exclusion of matters from the report: see PARA 486 ante) applies in relation to any such report to the Prime Minister as it applies in relation to any report under s 107(2): Regulation of Investigatory Powers Act 2000 s 39(3).
- 23    Ie subject to ibid s 39(2): see the text to notes 21-22 supra.
- 24    Ibid s 39(4).

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#### **505. Information to be provided to Surveillance Commissioners.**

It is the duty of every member of a police force<sup>1</sup>, every member of the staff of the Serious Organised Crime Agency<sup>2</sup>, every officer of revenue and customs<sup>3</sup>, and every officer of the Office of Fair Trading<sup>4</sup>, to comply with any request of a Surveillance Commissioner<sup>5</sup> for documents or information required by that Commissioner for the purpose of enabling him to carry out the functions<sup>6</sup> of such a Commissioner<sup>7</sup>.

1    Regulation of Investigatory Powers Act 2000 s 40(a). For the meaning of 'police force' see PARA 498 note 5 ante.

2    Ibid s 40(b) (substituted by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 142). As to the Serious Organised Crime Agency see PARA 430 et seq ante.

3    Regulation of Investigatory Powers Act 2000 s 40(d) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

4    Regulation of Investigatory Powers Act 2000 s 40(e) (added by the Enterprise Act 2002 s 199(1), (9)).

5    Ie a Commissioner appointed under the Police Act 1997 s 91: see PARA 486 ante.

6    Ie under the Regulation of Investigatory Powers Act 2000 ss 35-39 (as amended): see PARAS 501-504 ante.

7    Ibid s 40.

#### **UPDATE**

#### **505 Information to be provided to Surveillance Commissioners**

TEXT AND NOTE 3--2000 Act s 40(d) substituted: Serious Crime Act 2007 Sch 12 para 16.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(3) SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES/(iv) Other Authorisations/506. Secretary of State authorisations.

#### **(iv) Other Authorisations**

##### **506. Secretary of State authorisations.**

The Secretary of State<sup>1</sup> must not grant an authorisation for the carrying out of intrusive surveillance<sup>2</sup> except on an application made by a member of any of the intelligence services<sup>3</sup>, an official of the Ministry of Defence<sup>4</sup>, a member of Her Majesty's forces<sup>5</sup>, or an individual holding an office, rank or position with any such public authority<sup>6</sup> as may be designated for these purposes as an authority whose activities may require the carrying out of intrusive surveillance<sup>7</sup>. The provisions relating to the grant of authorisations for intrusive surveillance<sup>8</sup> have effect in relation to the grant of an authorisation by the Secretary of State on the application of an official of the Ministry of Defence, or of a member of Her Majesty's forces, as if the only matters in respect of the necessity of an authorisation<sup>9</sup> were the interests of national security<sup>10</sup>, and the purpose of preventing or detecting serious crime<sup>11</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 For the meaning of 'intrusive surveillance' see PARA 489 ante. As to such authorisations see PARA 497 ante.

3 Regulation of Investigatory Powers Act 2000 s 41(1)(a). 'Intelligence service' means the Security Service, the Secret Intelligence Service or GCHQ; and 'GCHQ' has the same meaning as in the Intelligence Services Act 1994 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 473); Regulation of Investigatory Powers Act 2000 s 81(1).

4 Ibid s 41(1)(b). As to the Ministry of Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq.

5 Ibid s 41(1)(c). References in s 41 to a member of Her Majesty's forces do not include references to any member of Her Majesty's forces who is a member of a police force by virtue of his service with the Royal Navy Regulating Branch, the Royal Military Police or the Royal Air Force Police: s 41(7). For the meaning of 'police force' see PARA 498 note 5 ante.

6 For the meaning of 'public authority' see PARA 495 note 5 ante.

7 Regulation of Investigatory Powers Act 2000 s 41(1)(d). The designation of any public authority for the purposes of s 41 must be by order made by the Secretary of State: s 41(3). The Secretary of State may by order provide, in relation to any public authority, that an application for an authorisation for the carrying out of intrusive surveillance may be made by an individual holding an office, rank or position with that authority only where his office, rank or position is one prescribed by the order: s 41(4). The Secretary of State may by order impose restrictions: (1) on the authorisations for the carrying out of intrusive surveillance that may be granted on the application of an individual holding an office, rank or position with any public authority designated for the purposes of s 41 (s 41(5)(a)); and (2) on the circumstances in which, or the purposes for which, such authorisations may be granted on such an application (s 41(5)(b)). The Secretary of State must not make a designation under s 41(3) unless a draft of the order containing the designation has been laid before Parliament and approved by a resolution of each House: s 41(6). Any power of the Secretary of State to make an order is exercisable by statutory instrument: s 78(1), (2). A statutory instrument which contains an order but which does not contain an order a draft of which has been approved for the purposes of s 41(6) is subject to annulment in pursuance of a resolution of either House of Parliament: s 78(3). An order may make different provisions for different cases and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5).

8 le *ibid* s 32 (as amended): see PARA 497 ante.

9 le the only matters mentioned in s 32(3): see PARA 497 ante.

10 *Ibid* s 41(2)(a).

11 *Ibid* s 41(2)(b). For the meaning of 'serious crime', and as to the meaning of 'detecting crime', see PARA 494 note 6 ante.

## UPDATE

### 506 Secretary of State authorisations

NOTE 5--Now, for 'Royal Navy Regulating Branch' read 'Royal Navy Police': 2000 Act s 41(7) (amended by the Armed Forces Act 2006 s 378, Sch 16 para 173).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(3) SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES/(iv) Other Authorisations/507. Intelligence services authorisations.

### 507. Intelligence services authorisations.

The grant by the Secretary of State<sup>1</sup> on the application of a member of one of the intelligence services<sup>2</sup> of any authorisation<sup>3</sup> must be made by the issue of a warrant<sup>4</sup>. A single warrant issued by the Secretary of State may combine both an authorisation<sup>5</sup> and an intelligence services warrant<sup>6</sup>; but the statutory provisions<sup>7</sup> that are applicable in the case of the authorisation or the intelligence services warrant apply separately in relation to the part of the combined warrant to which they are applicable<sup>8</sup>.

Intrusive surveillance<sup>9</sup> in relation to any premises or vehicle in the British Islands<sup>10</sup> is capable of being authorised by a warrant issued on the application of a member of the Secret Intelligence Service or GCHQ<sup>11</sup> only if the authorisation contained in the warrant is one satisfying the requirement that the authorisation is necessary<sup>12</sup> otherwise than in connection with any functions of that intelligence service in support of the prevention or detection of serious crime<sup>13</sup>.

The functions of the Security Service include acting on behalf of the Secret Intelligence Service or GCHQ in relation to the application for and grant of any authorisation in connection with any matter within the functions of the Secret Intelligence Service or GCHQ<sup>14</sup>, and the carrying out, in connection with any such matter, of any conduct authorised by such an authorisation<sup>15</sup>. However, this does not authorise the doing of anything by one intelligence service on behalf of another unless it is something which either the other service or a member of the other service has power to do<sup>16</sup>, and it is done otherwise than in connection with functions of the other service in support of the prevention or detection of serious crime<sup>17</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 For the meaning of 'intelligence service' see PARA 506 note 3 ante.

3 le under the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended).

4 *Ibid* s 42(1). This provision also applies to the issue of an authorisation by the Scottish Ministers by virtue of provision under the Scotland Act 1998 s 63: see the Regulation of Investigatory Powers Act 2000 s 42(1) (amended by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2000, SI 2000/3253, art 4(1), Sch 3 paras 3, 7(a)). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Regulation of Investigatory Powers Act 2000 s 42(2)(a).

6 Ibid s 42(2)(b). 'Intelligence services warrant' means a warrant under the Intelligence Services Act 1994 s 5 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 474): Regulation of Investigatory Powers Act 2000 s 42(6).

7 Ie the Regulation of Investigatory Powers Act 2000 or the Intelligence Services Act 1994.

8 Regulation of Investigatory Powers Act 2000 s 42(2). Section 42(2) also applies to the issue of an authorisation by the Scottish Ministers by virtue of provision under the Scotland Act 1998 s 63: see the Regulation of Investigatory Powers Act 2000 s 42(2) (amended by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2000, SI 2000/3253, art 4(1), Sch 3 paras 3, 7(b)).

9 For the meaning of 'intrusive surveillance' see PARA 489 ante.

10 For the meaning of 'British Islands' see PARA 223 note 9 ante.

11 For the meaning of 'GCHQ' see PARA 506 note 3 ante.

12 Ie the requirement of the Regulation of Investigatory Powers Act 2000 s 32(2)(a): see PARA 497 ante.

13 Ibid s 42(3). For the meaning of 'serious crime', and as to the meaning of 'detecting crime', see PARA 494 note 6 ante.

14 Ibid s 42(4)(a).

15 Ibid s 42(4)(b).

16 Ibid s 42(5)(a).

17 Ibid s 42(5)(b).

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## **(v) Grant, Renewal and Duration of Authorisations**

### **508. General rules about grant, renewal and duration.**

An authorisation<sup>1</sup> may be granted or renewed orally in any urgent case in which the entitlement to act of the person granting or renewing it is not confined to urgent cases<sup>2</sup>; and in any other case, must be in writing<sup>3</sup>. A single authorisation may combine two or more different authorisations<sup>4</sup>. Subject to the provisions concerning renewal of an authorisation<sup>5</sup> and to the powers of the Secretary of State to designate shorter periods<sup>6</sup>, an authorisation ceases to have effect at the end of the following period:

282 (1) in the case of an authorisation which:

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50. (a) has not been renewed and was granted either orally or by a person whose entitlement to act is confined to urgent cases<sup>7</sup>; or

51. (b) was last renewed either orally or by such a person<sup>8</sup>,

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283 the period of 72 hours beginning with the time when the grant of the authorisation or, as the case may be, its latest renewal takes effect<sup>9</sup>;

284 (2) in a case not falling within head (1) above in which the authorisation is for the conduct or the use of a covert human intelligence source<sup>10</sup>, the period of 12



months<sup>11</sup> beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect<sup>12</sup>; and  
 285 (c) in any case not falling within head (1) or head (2) above, the period of three months beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect<sup>13</sup>.

An authorisation may be renewed, at any time before the time at which it ceases to have effect, by any person who would be entitled to grant a new authorisation in the same terms<sup>14</sup>. However, a person must not renew an authorisation for the conduct or the use of a covert human intelligence source, unless he is satisfied that a review has been carried out of the specified matters<sup>15</sup>, and he has, for the purpose of deciding whether he should renew the authorisation, considered the results of that review<sup>16</sup>.

In relation to any authorisation granted by a member of any of the intelligence services<sup>17</sup>, and in relation to any authorisation contained in a warrant issued by the Secretary of State on the application of a member of any of the intelligence services, these provisions have effect subject to special rules<sup>18</sup>.

1 le under the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended). As to authorisations see PARAS 493-498 ante. As to the grant of authorisations see PARAS 499-507 ante.

2 Ibid s 43(1)(a).

3 Ibid s 43(1)(b). For the meaning of 'writing' see PARA 115 note 9 ante.

4 Ibid s 43(2). However, the provisions of the Regulation of Investigatory Powers Act 2000 that are applicable in the case of each of the authorisations apply separately in relation to the part of the combined authorisation to which they are applicable: s 43(2).

5 le subject to ibid s 43(4): see the text to note 14 infra.

6 The Secretary of State may by order provide in relation to authorisations of such descriptions as may be specified in the order that ibid s 43(3) is to have effect as if the period at the end of which an authorisation of a description so specified is to cease to have effect were such period shorter than that provided for by s 43(3) as may be fixed by or determined in accordance with that order: s 43(8). Any power of the Secretary of State to make an order is exercisable by statutory instrument: s 78(1), (2). An order may make different provisions for different cases, and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). As to the order that has been made see the Regulation of Investigatory Powers (Juveniles) Order 2000, SI 2000/2793. As to the Secretary of State see PARA 107 note 15 ante.

7 Regulation of Investigatory Powers Act 2000 s 43(3)(a)(i).

8 Ibid s 43(3)(a)(ii).

9 Ibid s 43(3)(a). References in s 43 to the time at which, or the day on which, the grant or renewal of an authorisation takes effect are references: (1) in the case of the grant of an authorisation to which head (3) infra does not apply, to the time at which or, as the case may be, day on which the authorisation is granted (s 43(9)(a)); (2) in the case of the renewal of an authorisation to which head (3) infra does not apply, to the time at which or, as the case may be, day on which the authorisation would have ceased to have effect but for the renewal (s 43(9)(b)); and (3) in the case of any grant or renewal that takes effect under s 36(2) (see PARA 502 ante) at a time or on a day later than that given by head (1) or head (2) supra, to the time at which or, as the case may be, day on which the grant or renewal takes effect in accordance with s 36(2) (s 43(9)(c)).

10 For the meaning of 'covert human intelligence source' see PARA 489 ante.

11 For the meaning of 'month' see PARA 140 note 17 ante.

12 Regulation of Investigatory Powers Act 2000 s 43(3)(b).

13 Ibid s 43(3)(c).

14 Ibid s 43(4). Sections 28-41 (as amended) (see PARAS 494-506 ante) have effect in relation to the renewal of an authorisation as if references to the grant of an authorisation included references to its renewal: s 43(5).

15 Ibid s 43(6)(a). The specified matters are: (1) the use made of the source in the period since the grant or, as the case may be, latest renewal of the authorisation (s 43(7)(a)); and (2) the tasks given to the source during that period and the information obtained from the conduct or the use of the source (s 43(7)(b)).

16 Ibid s 43(6)(b).

17 For the meaning of 'intelligence service' see PARA 506 note 3 ante.

18 Regulation of Investigatory Powers Act 2000 s 43(10). As to the special rules see s 44; and PARA 509 post.

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### **509. Special rules for intelligence services authorisations.**

A warrant containing an authorisation for the carrying out of intrusive surveillance<sup>1</sup> must not be issued on the application of a member of any of the intelligence services<sup>2</sup>, and if so issued must not be renewed<sup>3</sup>, except under the hand of the Secretary of State<sup>4</sup>. However, in an urgent case in which an application for a warrant containing an authorisation for the carrying out of intrusive surveillance has been made by a member of any of the intelligence services<sup>5</sup>, and the Secretary of State has himself expressly authorised the issue of the warrant in that case<sup>6</sup>, the warrant may be issued (but not renewed) under the hand of a senior official<sup>7</sup>.

A warrant containing an authorisation for the carrying out of intrusive surveillance which was issued on the application of a member of any of the intelligence services under the hand of a senior official<sup>8</sup>, and has not been renewed under the hand of the Secretary of State<sup>9</sup>, ceases to have effect at the end of the second working day<sup>10</sup> following the day of the issue of the warrant<sup>11</sup>. Where any warrant for the carrying out of intrusive surveillance<sup>12</sup> is issued or was last renewed on the application of a member of any of the intelligence services, the warrant (unless renewed or, as the case may be, renewed again) ceases to have effect at the following time<sup>13</sup>: (1) in the case of a warrant that has not been renewed, at the end of the period of six months<sup>14</sup> beginning with the day on which it was issued<sup>15</sup>; and (2) in any other case, at the end of the period of six months beginning with the day on which it would have ceased to have effect if not renewed again<sup>16</sup>. Where: (a) an authorisation for the carrying out of directed surveillance is granted by a member of any of the intelligence services<sup>17</sup>; and (b) the authorisation is renewed by an instrument endorsed under the hand of the person renewing the authorisation with a statement that the renewal is believed to be necessary on certain grounds<sup>18</sup>, the authorisation (unless renewed again) ceases to have effect<sup>19</sup> at the end of the period of six months beginning with the day on which it would have ceased to have effect but for the renewal<sup>20</sup>.

1 For the meaning of 'intrusive surveillance' see PARA 489 ante. As to warrants authorising such surveillance see PARA 507 ante.

2 Regulation of Investigatory Powers Act 2000 s 44(1)(a). For the meaning of 'intelligence service' see PARA 506 note 3 ante.

3 Ibid s 44(1)(b).

4 Ibid s 44(1). As to the Secretary of State see PARA 107 note 15 ante. Section 44 also applies in respect of warrants issued or renewed by or on behalf of the Scottish Ministers: see s 44 (amended by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2000, SI 2000/3253, art 4(1), Sch 3 paras 3, 8). As to the Scottish Ministers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Regulation of Investigatory Powers Act 2000 s 44(2)(a).

6 Ibid s 44(2)(b).

7 Ibid s 44(2). 'Senior official' means a member of the Senior Civil Service or a member of the senior management structure of Her Majesty's Diplomatic Service: s 81(1). If it appears to the Secretary of State that it is necessary to do so in consequence of any changes to the structure or grading of the home Civil Service or Diplomatic Service, he may by order make such amendments of the definition of 'senior official' as appear to him appropriate to preserve, so far as practicable, the effect of that definition: s 81(7). At the date at which this volume states the law no such order had been made. As to the civil service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 549 et seq.

8 Ibid s 44(3)(a).

9 Ibid s 44(3)(b).

10 Ie instead of at the time provided for by ibid s 43(3) (see PARA 508 ante): s 44(3). 'Working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321) in any part of the United Kingdom: Regulation of Investigatory Powers Act 2000 s 81(1). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

11 Ibid s 44(3). This provision is expressed to be subject to s 44(6): see note 20 infra.

12 Notwithstanding anything in ibid s 43(2) (see PARA 508 ante), in a case in which there is a combined warrant containing both an authorisation for the carrying out of intrusive surveillance, and an authorisation for the carrying out of directed surveillance, the reference in s 44(4) to a warrant for the carrying out of intrusive surveillance is a reference to the warrant so far as it confers both authorisations: s 44(7). For the meaning of 'directed surveillance' see PARA 489 ante.

13 Ie instead of at the time provided for by ibid s 43(3): see PARA 508 ante.

14 For the meaning of 'month' see PARA 140 note 17 ante.

15 Regulation of Investigatory Powers Act 2000 s 44(4)(a). Section 44(4) is expressed to be subject to s 44(3) (see the text to notes 8-11 infra) and s 44(6) (see the text to note 20 infra).

16 Ibid s 44(4)(b). See also note 15 supra.

17 Ibid s 44(5)(a).

18 Ibid s 44(5)(b). The grounds referred to are those falling within s 32(3)(a) or (c): see PARA 497 ante.

19 Ie instead of at the time provided for by ibid s 43(3): see PARA 508 ante.

20 Ibid s 44(5). The Secretary of State may by order provide in relation to authorisations of such descriptions as may be specified in the order that s 44(3) or (4) (see the text to notes 8-16 supra) or s 44(5) is to have effect as if the period at the end of which an authorisation of a description so specified is to cease to have effect were such period shorter than that provided for by s 44(3) or (4) as may be fixed by or determined in accordance with that order: s 44(6). Any power of the Secretary of State to make an order is exercisable by statutory instrument: s 78(1), (2). An order may make different provisions for different cases and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). At the date at which this volume states the law no such order had been made.

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## **510. Cancellation of authorisations.**

The person who granted or, as the case may be, last renewed an authorisation<sup>1</sup> must cancel it if: (1) he is satisfied that the authorisation is one in relation to which the requirements as to necessity and proportionality<sup>2</sup> are no longer satisfied<sup>3</sup>; or (2) in the case of an authorisation for the conduct or the use of a covert human intelligence source<sup>4</sup>, he is satisfied that arrangements

for the source's case that satisfy the specified requirements<sup>5</sup> no longer exist<sup>6</sup>. Where an authorisation was granted or, as the case may be, last renewed by a person entitled to act for any other person<sup>7</sup>, or by the deputy of any other person<sup>8</sup>, that other person must cancel the authorisation if he is satisfied as to either of the matters mentioned in head (1) or head (2) above<sup>9</sup>. Where an authorisation was granted or, as the case may be, last renewed by a person whose deputy had power to grant it, that deputy must cancel the authorisation if he is satisfied as to either of those matters<sup>10</sup>.

The Secretary of State<sup>11</sup> may by regulations provide for the person by whom any duty imposed by these provisions is to be performed in a case in which it would otherwise fall on a person who is no longer available to perform it<sup>12</sup>.

1     Ie under the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended). As to authorisations see PARAS 493-498 ante. As to the grant of authorisations see PARAS 499-507 ante.

2     Ie the requirements of *ibid* s 28(2)(a), (b) (see PARA 494 ante), s 29(2)(a), (b) (see PARA 495 ante) or, as the case may be, s 32(2)(a), (b) (see PARA 497 ante).

3     *Ibid* s 45(1)(a).

4     Ie an authorisation under *ibid* s 29 (as amended): see PARA 495 ante. For the meaning of 'covert human intelligence source' see PARA 489 ante.

5     Ie the requirements mentioned in *ibid* s 29(2)(c): see PARA 495 ante.

6     *Ibid* s 45(1)(b).

7     *Ibid* s 45(2)(a).

8     *Ibid* s 45(2)(b). The references in s 45 to a person's deputy are references to the following: (1) in relation to a chief constable of a police force maintained under the Police Act 1996 s 2 (see PARA 136 ante), the City of London Police Commissioner, or a chief constable of a police force maintained under or by virtue of the Police (Scotland) Act 1967 s 1, to his designated deputy; (2) in relation to the Metropolitan Police Commissioner, to an assistant metropolitan police commissioner; and (3) in relation to the chief constable of the Police Service of Northern Ireland, to the deputy chief constable of the Police Service of Northern Ireland: Regulation of Investigatory Powers Act 2000 s 45(6) (amended by the Police (Northern Ireland) Act 2000 s 78(2)(a), (b); and the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 131, 143, Sch 17 Pt 2). 'Designated deputy' has the same meaning as in the Regulation of Investigatory Powers Act 2000 s 34 (see PARA 500 note 7 ante): s 45(7). As to chief constables see PARAS 179 ante. As to the City of London Police Commissioner see PARA 187 ante. As to the Metropolitan Police Commissioner see PARA 183 ante; and as to assistant metropolitan police commissioners see PARA 186 ante.

9     *Ibid* s 45(2).

10    *Ibid* s 45(3).

11    As to the Secretary of State see PARA 107 note 15 ante.

12    Regulation of Investigatory Powers Act 2000 s 45(4). Regulations under s 45(4) may provide for the person on whom the duty is to fall to be a person appointed in accordance with the regulations: s 45(5). Any power of the Secretary of State to make regulations is exercisable by statutory instrument: s 78(1), (2). A statutory instrument containing any regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 78(4). Any regulations may make different provisions for different cases and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). As to the regulations that have been made see the Regulation of Investigatory Powers (Cancellation of Authorisations) Regulations 2000, SI 2000/2794.

## 511. Restrictions on authorisations extending to Scotland.

No person may grant or renew an authorisation<sup>1</sup> for the carrying out of any conduct if it appears to him that: (1) the authorisation is not one for which the Regulation of Investigatory Powers Act 2000<sup>2</sup> is the relevant statutory provision for all parts of the United Kingdom<sup>3</sup>; and (2) that all the conduct authorised by the grant or, as the case may be, renewal of the authorisation is likely to take place in Scotland<sup>4</sup>. In relation to any authorisation, the Regulation of Investigatory Powers Act 2000 is the relevant statutory provision for all parts of the United Kingdom in so far as it: (a) is granted or renewed on the grounds that it is necessary in the interests of national security or in the interests of the economic well-being of the United Kingdom<sup>5</sup>; (b) is granted or renewed by or on the application of a person holding any office, rank or position with any of the specified public authorities<sup>6</sup>; (c) authorises conduct of a person holding an office, rank or position with any of the public authorities so specified<sup>7</sup>; (d) authorises conduct of an individual acting as a covert human intelligence source<sup>8</sup> for the benefit of any of the public authorities so specified<sup>9</sup>; or (e) authorises conduct that<sup>10</sup> is surveillance<sup>11</sup>.

1    Ie under the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended). As to authorisations see PARAS 493-498 ante. As to the grant of authorisations see PARAS 499-507 ante.

2    Ie *ibid* Pt II (as amended).

3    *Ibid* s 46(1)(a). For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

4    *Ibid* s 46(1)(b).

5    *Ibid* s 46(2)(a).

6    *Ibid* s 46(2)(b). The specified public authorities are: (1) each of the intelligence services; (2) Her Majesty's forces; (3) the Ministry of Defence; (4) the Ministry of Defence Police; (5) the Civil Nuclear Constabulary; (6) the Office of Fair Trading; (7) the Serious Organised Crime Agency; (8) the Commissioners for Revenue and Customs; and (9) the British Transport Police: s 46(3) (amended by the Enterprise Act 2002 s 199(1), (10); the Energy Act 2004 s 69(1), Sch 14 para 8(1); the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 144; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). For the meaning of 'public authority' see PARA 495 note 5 ante. For the meaning of 'intelligence service' see PARA 506 note 3 ante. As to the Ministry of Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq. As to the Ministry of Defence Police see PARA 120 et seq ante. As to the Civil Nuclear Constabulary see PARA 128 ante. As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARA 6 et seq. As to the Serious Organised Crime Agency see PARA 430 et seq ante. As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq. As to the British Transport Police see PARA 129 ante.

For the purposes of so much of the Regulation of Investigatory Powers Act 2000 Pt II (as amended) as has effect in relation to any other public authority by virtue of: (a) the fact that it is a public authority for the time being specified in Sch 1 (see PARA 496 ante); or (b) an order under s 41(1)(d) (see PARA 506 ante) designating that authority for the purposes of s 41, the authorities specified in s 46(3) (as amended) must be treated as including that authority to the extent that the Secretary of State by order directs that the authority is a relevant public authority or, as the case may be, is a designated authority for all parts of the United Kingdom: s 46(4). Any power of the Secretary of State to make an order is exercisable by statutory instrument: s 78(1), (2). Any order may make different provisions for different cases and contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 78(5). As to the order that has been made see the Regulation of Investigatory Powers (Authorisations Extending to Scotland) Order 2007, SI 2007/934. As to the Secretary of State see PARA 107 note 15 ante.

7    Regulation of Investigatory Powers Act 2000 s 46(2)(c).

8    For the meaning of 'covert human intelligence source' see PARA 489 ante.

9    Regulation of Investigatory Powers Act 2000 s 46(2)(d).

10   Ie by virtue of *ibid* s 48(4): see PARA 489 note 2 ante.

11   *Ibid* s 46(2)(e).

## UPDATE

### 511 Restrictions on authorisations extending to Scotland

NOTE 6--2000 Act s 46(3) further amended: Serious Crime Act 2007 Sch 12 para 17. SI 2007/934 amended: SI 2007/3224, SI 2009/2847, SI 2009/3403.

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## (4) INVESTIGATION OF PROTECTED ELECTRONIC DATA

### 512. Notices requiring disclosure.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

These provisions apply where any protected information<sup>2</sup>:

- 286 (1) has come into the possession of any person<sup>3</sup> by means of the exercise of a statutory<sup>4</sup> power to seize, detain, inspect, search or otherwise to interfere with documents<sup>5</sup> or other property, or is likely to do so<sup>6</sup>;
- 287 (2) has come into the possession of any person by means of the exercise of any statutory power to intercept communications<sup>7</sup>, or is likely to do so<sup>8</sup>;
- 288 (3) has come into the possession of any person by means of the exercise of any power conferred by an authorisation<sup>9</sup>, or as a result of the giving of a notice<sup>10</sup>, or is likely to do so<sup>11</sup>;
- 289 (4) has come into the possession of any person as a result of having been provided or disclosed in pursuance of any statutory duty (whether or not one arising as a result of a request for information), or is likely to do so<sup>12</sup>; or
- 290 (5) has, by any other lawful means not involving the exercise of statutory powers, come into the possession of any of the intelligence services<sup>13</sup>, the police<sup>14</sup>, SOCA<sup>15</sup>, the SCDEA<sup>16</sup>, or Her Majesty's Revenue and Customs<sup>17</sup>, or is likely so to come into the possession of any of those services, the police, SOCA, SCDEA, or Her Majesty's Revenue and Customs<sup>18</sup>.

If any person with the appropriate permission<sup>19</sup> believes, on reasonable grounds: (a) that a key to the protected information is in the possession of any person<sup>20</sup>; (b) that the imposition of a disclosure requirement in respect of the protected information is necessary on specified grounds<sup>21</sup>, or is necessary for the purpose of securing the effective exercise or proper performance by any public authority<sup>22</sup> of any statutory power or statutory duty<sup>23</sup>; (c) that the imposition of such a requirement is proportionate to what is sought to be achieved by its imposition<sup>24</sup>; and (d) that it is not reasonably practicable for the person with the appropriate permission to obtain possession of the protected information in an intelligible form without the giving of a notice<sup>25</sup>, the person with that permission may, by notice to the person whom he believes to have possession of the key, impose a disclosure requirement in respect of the protected information<sup>26</sup>. Where it appears to a person with the appropriate permission that more than one person is in possession of the key to any protected information<sup>27</sup>, that any of those persons is in possession of that key in his capacity as an officer or employee of any body corporate<sup>28</sup>, and that another of those persons is the body corporate itself or another officer or employee of the body corporate<sup>29</sup>, a notice must not be given, by reference to his possession of

the key, to any officer or employee of the body corporate unless he is a senior officer of the body corporate<sup>30</sup> or it appears to the person giving the notice that there is no senior officer of the body corporate and (in the case of an employee) no more senior employee of the body corporate to whom it is reasonably practicable to give the notice<sup>31</sup>. Where it appears to a person with the appropriate permission that more than one person is in possession of the key to any protected information<sup>32</sup>, that any of those persons is in possession of that key in his capacity as an employee of a firm<sup>33</sup>, and that another of those persons is the firm itself or a partner of the firm<sup>34</sup>, a notice must not be given, by reference to his possession of the key, to any employee of the firm unless it appears to the person giving the notice that there is neither a partner of the firm nor a more senior employee of the firm to whom it is reasonably practicable to give the notice<sup>35</sup>.

A notice must not require the making of any disclosure to any person other than the person giving the notice<sup>36</sup> or such other person as may be specified in or otherwise identified by, or in accordance with, the provisions of the notice<sup>37</sup>. A notice must not require the disclosure of any key which is intended to be used for the purpose only of generating electronic signatures<sup>38</sup> and has not in fact been used for any other purpose<sup>39</sup>.

1 The Regulation of Investigatory Powers Act 2000 s 49 (as amended) is to come into force on such day as the Secretary of State may by order appoint: see s 83(2). At the date at which this volume states the law no such day had been appointed.

2 'Protected information' means any electronic data which, without the key to the data cannot, or cannot readily, be accessed; or cannot, or cannot readily, be put into an intelligible form: *ibid* s 56(1). 'Key', in relation to any electronic data, means any key, code, password, algorithm or other data the use of which (with or without other keys) allows access to the electronic data, or facilitates the putting of the data into an intelligible form: s 56(1). References to something's being intelligible or being put into an intelligible form include references to its being in the condition in which it was before an encryption or similar process was applied to it or, as the case may be, to its being restored to that condition: s 56(3).

3 For the meaning of 'person' see PARA 489 note 7 ante.

4 'Statutory', in relation to any power or duty, means conferred or imposed by or under any enactment or subordinate legislation; and 'enactment' includes an enactment passed after the passing of the Regulation of Investigatory Powers Act 2000 and an enactment contained in Northern Ireland legislation: s 81(1). For the meaning of 'subordinate legislation' see PARA 168 note 20 ante.

5 'Document' includes a map, plan, design, drawing, picture or other image: *ibid* s 81(1).

6 *Ibid* s 49(1)(a).

7 For the meaning of 'communication' see PARA 489 note 2 ante.

8 Regulation of Investigatory Powers Act 2000 s 49(1)(b).

9 *Ie* under *ibid* s 22(3) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 522) or under Pt II (ss 26-48) (as amended) (see PARA 489 et seq ante).

10 *Ie* under *ibid* s 22(4): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 522.

11 *Ibid* s 49(1)(c).

12 *Ibid* s 49(1)(d).

13 For the meaning of 'intelligence service' see PARA 506 note 3 ante.

14 'The police' means: (1) any constable (except a constable who is a member of the staff of the Serious Organised Crime Agency); (2) the Metropolitan Police Commissioner or any assistant metropolitan police commissioner; or (3) the City of London Police Commissioner: Regulation of Investigatory Powers Act 2000 s 56(1) (definition amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 149(b)). As to the office of constable see PARA 101 et seq ante. As to the Serious Organised Crime Agency see PARA 430 et seq ante. As to the Metropolitan Police Commissioner see PARA 183 ante; and as to assistant metropolitan police commissioners see PARA 186 ante. As to the City of London Police Commissioner see PARA 187 ante.

15 'SOCA' means the Serious Organised Crime Agency or any member of the staff of the Serious Organised Crime Agency: Regulation of Investigatory Powers Act 2000 s 56(1) (definition added by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 149(c)). See PARA 430 et seq ante.

16 'SCDEA' means the Scottish Crime and Drug Enforcement Agency: Regulation of Investigatory Powers Act 2000 s 56(1) (definition added by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, art 6, Schedule Pt 1 para 4(1), (12)(b)).

17 Ie the Commissioners for Revenue and Customs or any officer of revenue and customs: see the Regulation of Investigatory Powers Act 2000 s 56(1) (definition amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). See CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

18 Regulation of Investigatory Powers Act 2000 s 49(1)(e) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 145; Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, Schedule Pt 1 para 4(1), (8); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50).

19 As to the appropriate permission see the Regulation of Investigatory Powers Act 2000 s 49(11), Sch 2 (amended by the Courts Act 2003 s 65, Sch 4 para 12; and the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 156).

20 Regulation of Investigatory Powers Act 2000 s 49(2)(a). References in Pt III (ss 49-56) (as amended) to a person's having information (including a key to protected information) in his possession include references: (1) to its being in the possession of a person who is under his control so far as that information is concerned; (2) to his having an immediate right of access to it, or an immediate right to have it transmitted or otherwise supplied to him; and (3) to its being, or being contained in, anything which he or a person under his control is entitled, in exercise of any statutory power and without otherwise taking possession of it, to detain, inspect or search: s 56(1).

21 Ibid s 49(2)(b)(i). A disclosure requirement in respect of any protected information is necessary on specified grounds if it is necessary: (1) in the interests of national security( s 49(3)(a)); (2) for the purpose of preventing or detecting crime (s 49(3)(b)); or (3) in the interests of the economic well-being of the United Kingdom (s 49(3)(c)). For the meaning of 'crime', and as to the meaning of 'detecting crime', see PARA 494 note 6 ante. For the meaning of 'United Kingdom' see PARA 102 note 7 ante.

22 For the meaning of 'public authority' see PARA 495 note 5 ante.

23 Regulation of Investigatory Powers Act 2000 s 49(2)(b)(ii).

24 Ibid s 49(2)(c).

25 Ibid s 49(2)(d).

26 Ibid s 49(2). A notice imposing a disclosure requirement in respect of any protected information: (1) must be given in writing or (if not in writing) must be given in a manner that produces a record of its having been given; (2) must describe the protected information to which the notice relates; (3) must specify the matters falling within s 49(2)(b)(i) or (ii) (see the text to notes 21-23 supra) by reference to which the notice is given; (4) must specify the office, rank or position held by the person giving it; (5) must specify the office, rank or position of the person who for the purposes of Sch 2 (as amended) granted permission for the giving of the notice or (if the person giving the notice was entitled to give it without another person's permission) must set out the circumstances in which that entitlement arose; (6) must specify the time by which the notice is to be complied with, which time must allow a period for compliance which is reasonable in all the circumstances; and (7) must set out the disclosure that is required by the notice and the form and manner in which it is to be made: s 49(4). As to the effect of such a notice see PARA 513 post.

27 Ibid s 49(5)(a).

28 Ibid s 49(5)(b).

29 Ibid s 49(5)(c).

30 'Senior officer', in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose 'director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: ibid s 49(10).

31 Ibid s 49(5). Section 49(5) and s 49(6) (see the text to notes 32-35 infra) do not apply to the extent that there are special circumstances of the case that mean that the purposes for which the notice is given would be



defeated, in whole or in part, if the notice were given to the person to whom it would otherwise be required to be given by those provisions: s 49(7).

32 Ibid s 49(6)(a).

33 Ibid s 49(6)(b).

34 Ibid s 49(6)(c).

35 Ibid s 49(6). See also note 31 supra.

36 Ibid s 49(8)(a).

37 Ibid s 49(8)(b).

38 Ibid s 49(9)(a). 'Electronic signature' means anything in electronic form which: (1) is incorporated into, or otherwise logically associated with, any electronic communication or other electronic data; (2) is generated by the signatory or other source of the communication or data; and (3) is used for the purpose of facilitating, by means of a link between the signatory or other source and the communication or data, the establishment of the authenticity of the communication or data, the establishment of its integrity, or both: s 56(1). References to the authenticity of any communication or data are references to any one or more of the following:

25 (a) whether the communication or data comes from a particular person or other source;

26 (b) whether it is accurately timed and dated; (c) whether it is intended to have legal effect,

and references to the integrity of any communication or data are references to whether there has been any tampering with or other modification of the communication or data: s 56(4).

39 Ibid s 49(9)(b).

## UPDATE

### 512-518 Notices requiring disclosure ... Tipping-off

These provisions are now in force: SI 2007/2196.

### 512 Notices requiring disclosure

TEXT AND NOTES 17, 18--2000 Act s 49(1)(e) further amended and definition of 'the customs and excise' in 2000 Act s 56(1) omitted: Serious Crime Act 2007 Sch 12 paras 19, 23, Sch 14.

NOTE 19--2000 Act Sch 2 further amended: 2007 Act Sch 12 para 29.

NOTE 20--See *R v S* [2008] EWCA Civ 2177, [2009] 1 All ER 716; and PARA 517 NOTE 4.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(4) INVESTIGATION OF PROTECTED ELECTRONIC DATA/513. Effect of notice imposing disclosure requirement.

### 513. Effect of notice imposing disclosure requirement.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The effect of a notice imposing a disclosure requirement<sup>2</sup> in respect of any protected information<sup>3</sup> on a person who is in possession<sup>4</sup> at a relevant time<sup>5</sup> of both the protected information and a means of obtaining access to the information and of disclosing it in an intelligible form<sup>6</sup> is that he is entitled to use any key<sup>7</sup> in his possession to obtain access to the

information or to put it into an intelligible form<sup>8</sup>, and is required, in accordance with the notice imposing the requirement, to make a disclosure of the information in an intelligible form<sup>9</sup>. A person subject to a requirement<sup>10</sup> to make a disclosure of any information in an intelligible form must be taken to have complied with that requirement if he makes, instead, a disclosure of any key to the protected information that is in his possession<sup>11</sup>, and that disclosure is made, in accordance with the notice imposing the requirement, to the person to whom, and by the time by which, he was required to provide the information in that form<sup>12</sup>. Where, in a case in which a disclosure requirement in respect of any protected information is imposed on any person by a notice: (1) that person is not in possession of the information<sup>13</sup>; (2) that person is incapable, without the use of a key that is not in his possession, of obtaining access to the information and of disclosing it in an intelligible form<sup>14</sup>; or (3) the notice states, in pursuance of a direction<sup>15</sup>, that it can be complied with only by the disclosure of a key to the information<sup>16</sup>, the effect of imposing that disclosure requirement on that person is that he is required, in accordance with the notice imposing the requirement, to make a disclosure of any key to the protected information that is in his possession at a relevant time<sup>17</sup>.

Where the person given notice: (a) is entitled or obliged to disclose a key to protected information for the purpose of complying with any disclosure requirement imposed by a notice<sup>18</sup>; and (b) is in possession of more than one key to that information<sup>19</sup>, it is not necessary, for the purpose of complying with the requirement, for the person given notice to make a disclosure of any keys in addition to those the disclosure of which is, alone, sufficient to enable the person to whom they are disclosed to obtain access to the information and to put it into an intelligible form<sup>20</sup>. Where the person given notice is so allowed<sup>21</sup> to comply with a requirement without disclosing all of the keys in his possession<sup>22</sup>, and there are different keys, or combinations of keys, in the possession of that person the disclosure of which would<sup>23</sup> constitute compliance<sup>24</sup>, the person given notice may select which of the keys, or combination of keys, to disclose for the purpose of complying with that requirement<sup>25</sup>. Subject to these exceptions<sup>26</sup>, the person given notice must not be taken to have complied with the disclosure requirement by the disclosure of a key unless he has disclosed every key to the protected information that is in his possession at a relevant time<sup>27</sup>.

Where, in a case in which a disclosure requirement in respect of any protected information is imposed on any person by a notice: (i) that person has been in possession of the key to that information but is no longer in possession of it<sup>28</sup>; (ii) if he had continued to have the key in his possession, he would have been required by virtue of the giving of the notice to disclose it<sup>29</sup>; and (iii) he is in possession, at a relevant time, of any information that would facilitate the obtaining or discovery of the key or the putting of the protected information into an intelligible form<sup>30</sup>, the effect of imposing that disclosure requirement on that person is that he is required, in accordance with the notice imposing the requirement, to disclose all such information as is in his possession and as he may be required, in accordance with that notice, to disclose by the person to whom he would have been required to disclose the key<sup>31</sup>.

1 The Regulation of Investigatory Powers Act 2000 s 50 is to come into force on such day as the Secretary of State may by order appoint: see s 83(2). At the date at which this volume states the law no such day had been appointed.

2 I.e a notice under *ibid* s 49 (as amended): see PARA 512 ante.

3 For the meaning of 'protected information' see PARA 512 note 2 ante.

4 As to references to a person having information in his possession see PARA 512 note 19 ante. For the meaning of 'person' see PARA 489 note 7 ante.

5 'Relevant time', in relation to a disclosure requirement imposed by a notice under the Regulation of Investigatory Powers Act 2000 s 49 (as amended), means the time of the giving of the notice or any subsequent time before the time by which the requirement falls to be complied with: s 50(10).

6 For the meaning of 'intelligible form' see PARA 512 note 2 ante.

- 7 For the meaning of 'key' see PARA 512 note 2 ante.
- 8 Regulation of Investigatory Powers Act 2000 s 50(1)(a).
- 9 Ibid s 50(1)(b). Section 50(1) is expressed to be subject to the provisions of s 50(2)-(10): see note 5 supra and the text and notes 10-31 infra. As to failure to comply with a notice see PARA 517 post.
- 10 Ie under ibid s 50(1)(b): see the text to note 9 supra.
- 11 Ibid s 50(2)(a).
- 12 Ibid s 50(2)(b).
- 13 Ibid s 50(3)(a).
- 14 Ibid s 50(3)(b).
- 15 Ie a direction under ibid s 51 (as amended): see PARA 514 post.
- 16 Ibid s 50(3)(c).
- 17 Ibid s 50(3).
- 18 Ibid s 50(4)(a).
- 19 Ibid s 50(4)(b).
- 20 Ibid s 50(5).
- 21 Ie is allowed by ibid s 50(5): see the text to note 20 supra.
- 22 Ibid s 50(6)(a).
- 23 Ie under ibid s 50(5): see the text to note 20 supra.
- 24 Ibid s 50(6)(b).
- 25 Ibid s 50(6).
- 26 Ie subject to ibid s 50(5), (6): see the text to notes 20-25 supra.
- 27 Ibid s 50(7).
- 28 Ibid s 50(8)(a).
- 29 Ibid s 50(8)(b).
- 30 Ibid s 50(8)(c), (9).
- 31 Ibid s 50(8).

## **UPDATE**

### **512-518 Notices requiring disclosure ... Tipping-off**

These provisions are now in force: SI 2007/2196.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(4) INVESTIGATION OF PROTECTED ELECTRONIC DATA/514. Cases in which key required.

#### 514. Cases in which key required.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A notice<sup>2</sup> imposing a disclosure requirement in respect of any protected information<sup>3</sup> must not contain a statement for the purposes of the disclosure of a key<sup>4</sup> unless either the person who<sup>5</sup> granted the permission for the giving of the notice in relation to that information<sup>6</sup>, or any person whose permission for the giving of a such a notice in relation to that information would constitute the appropriate permission<sup>7</sup>, has given a direction that the requirement can be complied with only by the disclosure of the key itself<sup>8</sup>. A person must not give a direction for these purposes unless he believes: (1) that there are special circumstances of the case which mean that the purposes for which it was believed necessary to impose the requirement in question would be defeated, in whole or in part, if the direction were not given<sup>9</sup>; and (2) that the giving of the direction is proportionate to what is sought to be achieved by prohibiting any compliance with the requirement in question otherwise than by the disclosure of the key itself<sup>10</sup>.

Where a direction for these purposes is given by a chief officer of police, by the Director General of the Serious Organised Crime Agency, by the Director General of the Scottish Crime and Drug Enforcement Agency, by the Commissioners for Revenue and Customs or by a member of Her Majesty's forces, the person giving the direction must give a notification that he has done so<sup>11</sup>. The notification must be given not more than seven days after the day of the giving of the direction to which it relates<sup>12</sup>, and may be given either in writing or by being transmitted by electronic means<sup>13</sup>.

1 The Regulation of Investigatory Powers Act 2000 s 51 (as amended) is to come into force on such day as the Secretary of State may by order appoint: see s 83(2). At the date at which this volume states the law no such day had been appointed.

2 I.e a notice under *ibid* s 49 (as amended): see PARA 512 ante.

3 For the meaning of 'protected information' see PARA 512 note 2 ante.

4 I.e for the purposes of the Regulation of Investigatory Powers Act 2000 s 50(3)(c): see PARA 513 ante. For the meaning of 'key' see PARA 512 note 2 ante.

5 I.e for the purposes of *ibid* Sch 2 (as amended): see PARA 512 ante.

6 *Ibid* s 51(1)(a).

7 *Ibid* s 51(1)(b). The appropriate permission is that under Sch 2 (as amended): see PARA 512 ante.

8 *Ibid* s 51(1). A direction for the purposes of s 51(1) by the police, the Serious Organised Crime Agency, the Scottish Crime and Drug Enforcement Agency, Her Majesty's Revenue and Customs or a member of Her Majesty's forces must not be given: (1) in the case of a direction by the police or by a member of Her Majesty's forces who is a member of a police force, except by or with the permission of a chief officer of police; (2) in the case of a direction by the Serious Organised Crime Agency, except by or with the permission of the Director General of that Agency; (3) in the case of a direction by Scottish Crime and Drug Enforcement Agency, except by or with the permission of the Director General of that Agency; (4) in the case of a direction by Her Majesty's Revenue and Customs, except by or with the permission of the Commissioners for Revenue and Customs; or (5) in the case of a direction by a member of Her Majesty's forces who is not a member of a police force, except by or with the permission of a person of or above the rank of brigadier or its equivalent: s 51(2) (amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 146(1), (2); the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, art 6, Schedule Pt 1 para 4(1), (9)(a)(i); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). A permission given for the purposes of the Regulation of Investigatory Powers Act 2000 s 51(2) (as amended) by a chief officer of police, the Director General of the Serious Organised Crime Agency, the Director General of the Scottish Crime and Drug Enforcement Agency, the Commissioners for Revenue and Customs or a person of or above any such rank as is mentioned in head (4) *supra* must be given expressly in relation to the direction in question: s 51(3) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 146(1), (3); the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, Schedule Pt 1 para 4(1), (9)(b); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). For the meaning of 'the police' see PARA 512 note 14 ante. As to the

Serious Organised Crime Agency see PARA 430 et seq ante; and see PARA 512 note 15 ante. As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq; and see PARA 512 note 17 ante. For the meaning of 'police force' see PARA 498 note 5 ante. 'Chief officer of police' means any of the following: (a) the chief constable of a police force maintained under or by virtue of the Police Act 1996 s 2 (see PARA 136 ante) or the Police (Scotland) Act 1967 s 1; (b) the Metropolitan Police Commissioner; (c) the City of London Police Commissioner; (d) the chief constable of the Police Service of Northern Ireland; (e) the chief constable of the Ministry of Defence Police; (f) the Provost Marshal of the Royal Navy Police; (g) the Provost Marshal of the Royal Military Police; (h) the Provost Marshal of the Royal Air Force Police; (i) the chief constable of the British Transport Police: Regulation of Investigatory Powers Act 2000 s 56(1) (definition amended by the Police (Northern Ireland) Act 2000 s 78(2)(a); the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 131, 149(a), Sch 17 Pt 2; and the Armed Forces Act 2006 s 378(1), Sch 16 para 174). As to chief constables see PARAS 179 ante. As to the Metropolitan Police Commissioner see PARA 183 ante. As to the City of London Police Commissioner see PARA 187 ante. As to the Ministry of Defence Police see PARA 120 et seq ante. As to the British Transport Police see PARA 129 ante.

9 Regulation of Investigatory Powers Act 2000 s 51(4)(a).

10 Ibid s 51(4)(b). The matters to be taken into account in considering whether the requirement of s 51(4)(b) is satisfied in the case of any direction include the extent and nature of any protected information, in addition to the protected information in respect of which the disclosure requirement is imposed, to which the key is also a key; and any adverse effect that the giving of the direction might have on a business carried on by the person on whom the disclosure requirement is imposed: s 51(5). For the meaning of 'person' in this context see PARA 489 note 7 ante.

11 Ibid s 51(6) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 146(1), (4); and the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, Schedule Pt 1 para 4(1), (9)(c)). The notification must be given: (1) in a case where the direction is given by a member of Her Majesty's forces who is not a member of a police force, and otherwise than in connection with activities of members of Her Majesty's forces in Northern Ireland, to the Intelligence Services Commissioner; and in any other case, to the Chief Surveillance Commissioner: Regulation of Investigatory Powers Act 2000 s 51(6). As to the Intelligence Services Commissioner see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 476. As to the Chief Surveillance Commissioner see PARA 486 ante.

12 Ibid s 51(7)(a).

13 Ibid s 51(7)(b). For the meaning of 'writing' see PARA 115 note 9 ante.

## UPDATE

### 512-518 Notices requiring disclosure ... Tipping-off

These provisions are now in force: SI 2007/2196.

### 514 Cases in which key required

TEXT AND NOTES--2000 Act s 51 further amended: Serious Crime Act 2007 Sch 12 para 20.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(4) INVESTIGATION OF PROTECTED ELECTRONIC DATA/515. Safeguards.

### 515. Safeguards.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

It is the duty of each of the specified persons<sup>2</sup> to ensure that such arrangements are in force, in relation to persons under his control who<sup>3</sup> obtain possession of keys to protected information<sup>4</sup>, as he considers necessary for securing: (1) that a key disclosed in pursuance of a notice<sup>5</sup> is used for obtaining access to, or putting into an intelligible form<sup>6</sup>, only protected information in

relation to which power to give such a notice was exercised or could have been exercised if the key had not already been disclosed<sup>7</sup>; (2) that the uses to which a key so disclosed is put are reasonable having regard both to the uses to which the person using the key is entitled to put any protected information to which it relates and to the other circumstances of the case<sup>8</sup>; (3) that, having regard to those matters, the use and any retention of the key are proportionate to what is sought to be achieved by its use or retention<sup>9</sup>; (4) that the specified requirements are satisfied<sup>10</sup> in relation to any key disclosed in pursuance of a notice<sup>11</sup>; (5) that, for the purpose of ensuring that those requirements are satisfied, any key so disclosed is stored, for so long as it is retained, in a secure manner<sup>12</sup>; (6) that all records of a key so disclosed (if not destroyed earlier) are destroyed as soon as the key is no longer needed for the purpose of enabling protected information to be put into an intelligible form<sup>13</sup>.

Where any relevant person incurs any loss or damage<sup>14</sup> in consequence of any breach by a specified person of the duty imposed on him by heads (1) to (6) above<sup>15</sup>, or any contravention by any person whatever of arrangements made in pursuance of those provisions in relation to persons under the control of a specified person<sup>16</sup>, the breach or contravention is actionable against the specified person at the suit or instance of the relevant person<sup>17</sup>. In any such proceedings, it is the duty of the court to have regard to any opinion with respect to the matters to which the proceedings relate that is or has been given by a relevant Commissioner<sup>18</sup>.

1 The Regulation of Investigatory Powers Act 2000 s 55 (as amended) is to come into force on such day as the Secretary of State may by order appoint: see s 83(2). At the date at which this volume states the law no such day had been appointed.

2 The specified persons are: (1) the Secretary of State and every other Minister of the Crown in charge of a government department; (2) every chief officer of police; (3) the Director General of the Serious Organised Crime Agency; (4) the Director General of the Scottish Crime and Drug Enforcement Agency; (5) the Commissioners for Revenue and Customs; and (6) every person whose officers or employees include persons with duties that involve the giving of notices under *ibid* s 49 (as amended) (see *PARA 512 ante*): s 55(1) (amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 148(1), (2); the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, art 6, Schedule Pt 1 para 4(1), (11)(a); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). The Serious Organised Crime and Police Act 2005 Sch 1 para 11 (see *PARA 437 ante*) does not apply in relation to the duties of the Director General of the Serious Organised Crime Agency under the Regulation of Investigatory Powers Act 2000 s 55 (as amended): s 55(3A) (added by the Serious Organised Crime and Police Act 2005 Sch 4 paras 131, 148(1), (3)). As to the Secretary of State see *PARA 107 note 15 ante*. For the meaning of 'chief officer of police' see *PARA 514 note 8 ante*. As to the Director General of the Serious Organised Crime Agency see *PARA 437 ante*. As to Her Majesty's Revenue and Customs see *CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.*

3 *Ie* by virtue of the Regulation of Investigatory Powers Act 2000 Pt III (ss 49-56) (as amended).

4 For the meanings of 'key' and 'protected information' see *PARA 512 note 2 ante*.

5 *Ie* a notice under the Regulation of Investigatory Powers Act 2000 s 49 (as amended): see *PARA 512 ante*.

6 For the meaning of 'intelligible form' see *PARA 512 note 2 ante*.

7 Regulation of Investigatory Powers Act 2000 s 55(2)(a).

8 *Ibid* s 55(2)(b).

9 *Ibid* s 55(2)(c).

10 The specified requirements are satisfied in relation to any key disclosed in pursuance of a notice if the number of persons to whom the key is disclosed or otherwise made available, and the number of copies made of the key, are each limited to the minimum that is necessary for the purpose of enabling protected information to be put into an intelligible form: *ibid* s 55(3).

11 *Ibid* s 55(2)(d).

12 *Ibid* s 55(2)(e).

13 Ibid s 55(2)(f).

14 A person is a 'relevant person' if he is: (1) a person who has made a disclosure in pursuance of a notice; or (2) a person whose protected information or key has been disclosed in pursuance of such a notice; and 'loss or damage' must be taken into account for these purposes to the extent only that it relates to the disclosure of particular protected information or a particular key which, in the case of a person falling with head (2) supra, must be his information or key: ibid s 55(5). For the purposes of s 55(5), information belongs to a person if he has any right that would be infringed by an unauthorised disclosure of the information; and a key belongs to a person if it is a key to information that belongs to him or he has any right that would be infringed by an unauthorised disclosure of the key: s 55(6). For the meaning of 'person' in this context see PARA 489 note 7 ante.

15 Ibid s 55(4)(a).

16 Ibid s 55(4)(b).

17 Ibid s 55(4).

18 Ibid s 55(7). 'Relevant Commissioner' means the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner: s 55(8). As to the Interception of Communications Commissioner see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 524-526; and as to the Intelligence Services Commissioner see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 476. As to Surveillance Commissioners see PARAS 486, 491 ante; and as to Assistant Surveillance Commissioners see PARA 491 ante.

## UPDATE

### 512-518 Notices requiring disclosure ... Tipping-off

These provisions are now in force: SI 2007/2196.

### 515 Safeguards

NOTE 2--2000 Act s 55(1) further amended: Serious Crime Act 2007 Sch 12 para 22.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(4) INVESTIGATION OF PROTECTED ELECTRONIC DATA/516.  
Arrangements for payments for disclosure.

### 516. Arrangements for payments for disclosure.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

It is the duty of the Secretary of State<sup>2</sup> to ensure that such arrangements are in force as he thinks appropriate for requiring or authorising, in such cases as he thinks fit, the making to persons<sup>3</sup> to whom notices<sup>4</sup> are given of appropriate contributions towards the costs incurred by them in complying with such notices<sup>5</sup>. For the purpose of complying with this duty, the Secretary of State may make arrangements for payments to be made out of money provided by Parliament<sup>6</sup>.

<sup>1</sup> The Regulation of Investigatory Powers Act 2000 s 52 is to come into force on such day as the Secretary of State may by order appoint: see s 83(2). At the date at which this volume states the law no such day had been appointed.

<sup>2</sup> As to the Secretary of State see PARA 107 note 15 ante.

- 3 For the meaning of 'person' see PARA 489 note 7 ante.
- 4 le notices under the Regulation of Investigatory Powers Act 2000 s 49 (as amended): see PARA 512 ante.
- 5 Ibid s 52(1).
- 6 Ibid s 52(2). As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.

## UPDATE

### 512-518 Notices requiring disclosure ... Tipping-off

These provisions are now in force: SI 2007/2196.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(4) INVESTIGATION OF PROTECTED ELECTRONIC DATA/517. Failure to comply with a notice.

### 517. Failure to comply with a notice.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A person<sup>2</sup> to whom a notice<sup>3</sup> has been given is guilty of an offence if he knowingly fails, in accordance with the notice, to make the disclosure required by virtue of the giving of the notice<sup>4</sup>. In proceedings against any person for such an offence, if it is shown that that person was in possession of a key to any protected information<sup>5</sup> at any time before the time of the giving of the notice, that person must be taken for the purposes of those proceedings to have continued to be in possession of that key at all subsequent times, unless it is shown that the key was not in his possession after the giving of the notice and before the time by which he was required to disclose it<sup>6</sup>. A person must be taken to have shown that he was not in possession of a key to protected information at a particular time if sufficient evidence of that fact is adduced to raise an issue with respect to it<sup>7</sup> and the contrary is not proved beyond a reasonable doubt<sup>8</sup>.

In proceedings against any person for such an offence it is a defence for that person to show that it was not reasonably practicable for him to make the disclosure required by virtue of the giving of the notice before the time by which he was required, in accordance with that notice, to make it<sup>9</sup>; but that he did make that disclosure as soon after that time as it was reasonably practicable for him to do so<sup>10</sup>.

1 The Regulation of Investigatory Powers Act 2000 s 53 (as amended) is to come into force on such day as the Secretary of State may by order appoint: see s 83(2). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'person' see PARA 489 note 7 ante.

3 le a notice under the Regulation of Investigatory Powers Act 2000 s 49 (as amended): see PARA 512 ante.

4 Ibid s 53(1). A person guilty of such an offence is liable, on conviction on indictment, to imprisonment for a term not exceeding the appropriate maximum term or to a fine, or to both; or, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both: s 53(5) (amended by the Terrorism Act 2006 s 15(1)(a)). 'The appropriate maximum term' means in a national security case, five years; and in any other case, two years: Regulation of Investigatory Powers Act 2000 s 53(5A) (s 53(5A), (5B) added by the Terrorism Act 2006 s 15(1)(b), (2)). 'A national security case' means a case in which the grounds specified in the notice to which the offence relates as the grounds for imposing a disclosure requirement were or included a belief that the imposition of the requirement was necessary in the



interests of national security: Regulation of Investigatory Powers Act 2000 s 53(5B) (as so added). As to the statutory maximum see PARA 127 note 6 ante.

5 For the meanings of 'key' and 'protected information' see PARA 512 note 2 ante. As to references to a person having information, including a key to such information, in his possession see PARA 512 note 20 ante.

6 Regulation of Investigatory Powers Act 2000 s 53(2).

7 Ibid s 53(3)(a). As to the standard of proof to be met by the accused see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1370-1371.

8 Ibid s 53(3)(b).

9 Ibid s 53(4)(a).

10 Ibid s 53(4)(b).

## UPDATE

### 512-518 Notices requiring disclosure ... Tipping-off

These provisions are now in force: SI 2007/2196.

### 517 Failure to comply with a notice

NOTE 4--A key or password providing access to an encrypted computer file is a fact and does not constitute admission of guilt, although knowledge of the means of access to the data might engage the privilege against self-incrimination: *R v S* [2008] EWCA Crim 2177, [2009] 1 All ER 716.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(4) INVESTIGATION OF PROTECTED ELECTRONIC DATA/518. Tipping-off.

### 518. Tipping-off.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

Where a notice<sup>2</sup> contains a provision requiring the person<sup>3</sup> to whom the notice is given<sup>4</sup>, and every other person who becomes aware of it or of its contents<sup>5</sup>, to keep secret the giving of the notice, its contents and the things done in pursuance of it<sup>6</sup>, a person who makes a disclosure to any other person of anything that he is required by the notice to keep secret is guilty of an offence<sup>7</sup>.

A requirement to keep anything secret must not be included in a notice except where it is included with the consent of the person who<sup>8</sup> granted the permission for the giving of the notice<sup>9</sup>, or where the person who gives the notice is himself a person whose permission for the giving of such a notice in relation to the information in question would have constituted<sup>10</sup> appropriate permission<sup>11</sup>. A notice must not contain a requirement to keep anything secret except where the protected information<sup>12</sup> to which it relates has, or is likely to, come into the possession of the police<sup>13</sup>, SOCA<sup>14</sup>, SCDEA<sup>15</sup>, Her Majesty's Revenue and Customs<sup>16</sup>, or any of the intelligence services<sup>17</sup>, by means which it is reasonable, in order to maintain the effectiveness of any investigation or operation or of investigatory techniques generally, or in the interests of the safety or well-being of any person, to keep secret from a particular person<sup>18</sup>.

In proceedings against any person for an offence in respect of any disclosure, it is a defence for that person to show<sup>19</sup>:

- 291 (1) that the disclosure was effected entirely by the operation of software designed to indicate when a key<sup>20</sup> to protected information has ceased to be secure<sup>21</sup>, and that person could not reasonably have been expected to take steps, after being given the notice or (as the case may be) becoming aware of it or of its contents, to prevent the disclosure<sup>22</sup>; or
- 292 (2) that the disclosure was made by or to a professional legal adviser in connection with the giving, by the adviser to any client of his, of advice about the effect of provisions of the Regulation of Investigatory Powers Act 2000<sup>23</sup>, and the person to whom or, as the case may be, by whom it was made was the client or a representative of the client<sup>24</sup>; or
- 293 (3) that the disclosure was made by a legal adviser in contemplation of, or in connection with, any legal proceedings<sup>25</sup> and for the purposes of those proceedings<sup>26</sup>; or
- 294 (4) that the disclosure was confined to a disclosure made to a relevant Commissioner<sup>27</sup> or authorised by such a Commissioner<sup>28</sup>, by the terms of the notice<sup>29</sup>, by or on behalf of the person who gave the notice<sup>30</sup>, or by or on behalf of a person who is in lawful possession of the protected information to which the notice relates<sup>31</sup> and who came into possession of that information by specified means<sup>32</sup>.

Neither head (2) nor (3) above apply in the case of a disclosure made with a view to furthering any criminal purpose<sup>33</sup>.

In proceedings for an offence against a person other than the person to whom the notice was given, it is a defence for the person against whom the proceedings are brought to show that he neither knew nor had reasonable grounds for suspecting that the notice contained a requirement to keep secret what was disclosed<sup>34</sup>.

1 The Regulation of Investigatory Powers Act 2000 s 54 (as amended) is to come into force on such day as the Secretary of State may by order appoint: see s 83(2). At the date at which this volume states the law no such day had been appointed.

2 Ie a notice under *ibid* s 49 (as amended): see PARA 512 ante.

3 For the meaning of 'person' see PARA 489 note 7 ante.

4 Regulation of Investigatory Powers Act 2000 s 54(1)(a).

5 *Ibid* s 54(1)(b).

6 *Ibid* s 54(1).

7 *Ibid* s 54(4). The penalty for such an offence is, on conviction on indictment, imprisonment for a term not exceeding five years or a fine, or both; or, on summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both: s 54(4). As to the statutory maximum see PARA 127 note 6 ante.

8 Ie for the purposes of *ibid* Sch 2: see PARA 512 ante.

9 *Ibid* s 54(2)(a).

10 Ie under *ibid* Sch 2: see PARA 512 ante.

11 *Ibid* s 54(2)(b).

12 For the meaning of 'protected information' see PARA 512 note 2 ante.

13 For the meaning of 'the police' see PARA 512 note 14 ante.

14 For the meaning of 'SOCA' see PARA 512 note 15 ante.

15 For the meaning of 'SCDEA' see PARA 512 note 16 ante.

16 As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq; and see PARA 512 note 17 ante.

17 See the Regulation of Investigatory Powers Act 2000 s 54(3)(a), (b) (amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 131, 147; the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, SI 2007/1098, art 6, Schedule Pt 1 para 4(1), (10); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). For the meaning of 'intelligence service' see PARA 506 note 3 ante.

18 Regulation of Investigatory Powers Act 2000 s 54(3).

19 As to the standard of proof to be met by the accused see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1370-1371.

20 For the meaning of 'key' see PARA 512 note 2 ante.

21 Regulation of Investigatory Powers Act 2000 s 54(5)(a).

22 Ibid s 54(5)(b).

23 Ibid s 54(6)(a). The provisions in question are those of Pt III (ss 49-56) (as amended).

24 Ibid s 54(6)(b).

25 Ibid s 54(7)(a). 'Legal proceedings' means civil or criminal proceedings in or before any court or tribunal: s 81(1). For the meanings of 'civil proceedings' and 'criminal proceedings' see PARA 492 note 12 ante.

26 Ibid s 54(7)(b).

27 'Relevant Commissioner' means the Interception of Communications Commissioner, the Intelligence Services Commissioner or any Surveillance Commissioner or Assistant Surveillance Commissioner: ibid s 54(11). As to the Interception of Communications Commissioner see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 524-526; and as to the Intelligence Services Commissioner see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 476. As to Surveillance Commissioners see PARAS 486, 491 ante; and as to Assistant Surveillance Commissioners see PARA 491 ante.

28 Ibid s 54(9)(a).

29 Ibid s 54(9)(b).

30 Ibid s 54(9)(c).

31 Ibid s 54(9)(d)(i).

32 Ibid s 54(9)(d)(ii). The specified means are those mentioned in s 49(1) (as amended): see PARA 512 ante.

33 Ibid s 54(8).

34 Ibid s 54(10).

## UPDATE

### 512-518 Notices requiring disclosure ... Tipping-off

These provisions are now in force: SI 2007/2196.

### 518 Tipping-off

TEXT AND NOTES 17, 18--2000 Act s 54(3) further amended: Serious Crime Act 2007 Sch 12 para 21.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(5) POLICE CUSTODY/519. Detention of persons in police custody.

## **(5) POLICE CUSTODY**

### **519. Detention of persons in police custody.**

It is the duty of a constable<sup>1</sup> who lawfully has a prisoner in his charge to take all reasonable measures to ensure that he does not: (1) escape, or assist others to do so; (2) injure himself or others; (3) destroy evidence; or (4) commit further crime, for example malicious damage to property<sup>2</sup>. Reasonable measures may include searching, but what is reasonable in a particular case must depend upon the circumstances, which may be such as to call for some departure from the measures which are *prima facie* reasonable and necessary for that type of case<sup>3</sup>. To the extent that a constable takes measures which cannot be justified, he is not acting in the execution of his duty<sup>4</sup>. A constable must generally take a person arrested to a police station<sup>5</sup>. A constable who arrests a person whom he reasonably suspects to be a terrorist must take him as soon as is reasonably practicable to the police station which the constable considers the most appropriate<sup>6</sup>.

In certain circumstances and for short periods a magistrates' court may order a person's detention at a police station instead of committing him to prison<sup>7</sup>.

A police station is a place of safety<sup>8</sup> to which, in certain circumstances, a justice may order a child or young person to be taken and detained<sup>9</sup> or to which a mentally disordered person may be removed<sup>10</sup>.

Officers in charge of police stations must in certain circumstances receive and keep in custody certain persons subject to naval, military or air force discipline<sup>11</sup>.

1 As to the office of constable see PARA 101 et seq ante.

2 *Lindley v Rutter* [1981] QB 128 at 134, [1980] 3 WLR 660 at 665 per Donaldson LJ.

3 *Lindley v Rutter* [1981] QB 128, [1980] 3 WLR 660.

4 *Lindley v Rutter* [1981] QB 128, [1980] 3 WLR 660.

5 See the Police and Criminal Evidence Act 1984 s 30 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 933. As to search upon arrest see s 32 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 936. As to the keeping of arrested persons in police detention see Pt IV (ss 34-52) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 938 et seq. As to searches of arrested persons see ss 54-55; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 1006-1007. As to legal advice and assistance for persons at police stations see LEGAL AID vol 65 (2008) PARA 131 et seq. As to the duty of care owed in respect of release of a person in *de facto* custody see *Wilson v Chief Constable, Lothian and Borders Constabulary* 1989 SLT 97, Ct of Sess.

6 See the Terrorism Act 2000 s 41, Sch 8 para 1(4); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 421.

7 See the Magistrates Courts Act 1980 ss 135, 136 (both as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 7.

8 See the Children and Young Persons Act 1933 s 107(1) (as amended); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 608.

9 See under *ibid* s 28(1) (as amended); see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 750.

10 See the Mental Health Act 1983 s 136; and MENTAL HEALTH vol 30(2) (Reissue) PARA 550.

11 See the Army Act 1955 ss 129(2), 190(2), 202; the Air Force Act 1955 ss 129(2), 190(2), 202; the Naval Discipline Act 1957 s 107(1)(b), (c), (2); and see ARMED FORCES vol 2(2) (Reissue) PARAS 478, 515; PRISONS vol 36(2) (Reissue) PARA 638. The provisions cited above apply to officers in charge of police stations as they apply to governors of prisons.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(6) PROPERTY IN POLICE POSSESSION/520. Disposal of property in police possession.

## **(6) PROPERTY IN POLICE POSSESSION**

### **520. Disposal of property in police possession.**

The disposal of property which has come into police possession in connection with the investigation of a suspected offence is governed by statutory provisions<sup>1</sup>. Where any property has come into the possession of the police in connection with their investigation of a suspected offence, a court of summary jurisdiction<sup>2</sup> may, on application, either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner<sup>3</sup> of it, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet<sup>4</sup>. Such an order does not affect the right of any person to take within six months<sup>5</sup> from the date of the order legal proceedings against any person in possession of property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right ceases<sup>6</sup>. This power is independent of other powers exercisable by magistrates' courts to deprive an offender of his right, if any, to certain property or to order restitution<sup>7</sup>.

The Police (Property) Act 1897 also applies to property which has come into the possession of the Serious Organised Crime Agency as it applies to property that has come into the possession of the police<sup>8</sup>.

A member of a police force who, without an order, hands over property to somebody other than the lawful owner is liable for conversion<sup>9</sup>, and an order should always be applied for where there may be conflicting claims<sup>10</sup>.

The police owe a duty of care to protect property in their possession against damage by third parties<sup>11</sup>.

1 See the Police (Property) Act 1897. The provisions of this Act are also applied to property seized under the Public Stores Act 1875 (see s 12 (as substituted)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 542) and under the Criminal Damage Act 1971 (see s 6(3); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 342). Nothing in the Police and Criminal Evidence Act 1984 s 22 (power of the police to retain property seized by them: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 889) affects any power of a court to make an order under the Police (Property) Act 1897 s 1 (see the text to notes 2-4 infra): Police and Criminal Evidence Act 1984 s 22(5). As to other statutory powers relating to the disposal of property seized by the police see eg the Criminal Justice and Public Order Act 1994 ss 60A (as added), 62(1), 64(4), 66(1) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 590; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 862); the Knives Act 1997 s 7 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 703); and the Police Reform Act 2002 ss 59, 60 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 972).

2 A court of summary jurisdiction is the magistrates court: see MAGISTRATES vol 29(2) (Reissue) PARA 583 et seq. See *R v Uxbridge Justices, ex p Metropolitan Police Comr* [1981] 1 All ER 940, [1981] 1 WLR 112, where the procedure by complaint and summons was properly used to bring proceedings under the Police (Property) Act 1897 s 1(1) (as amended). On appeal it was held that magistrates also have the power to make an order as to costs: *R v Uxbridge Justices, ex p Metropolitan Police Comr* [1981] QB 829, [1981] 3 All ER 129, CA.

3 'Owner' has its ordinary popular meaning, ie the person entitled and not simply the person who happened to have the property in his hands at a given moment: *Raymond Lyons & Co Ltd v Metropolitan Police Comr* [1975] QB 321, [1975] 1 All ER 335, where it was said that the statutory procedure should not be used where there was difficulty in determining the real owner. See also *Chief Constable of West Midlands v White* (1992) 157 JP 222. As to interpleader applications in the High Court or county courts to determine ownership of property see CIVIL PROCEDURE vol 12 (2009) PARA 1585 et seq.

4 Police (Property) Act 1897 s 1(1) (amended by the Theft Act 1968 ss 33(3), 36(2), (3), Sch 3 Pt III; the Criminal Justice Act 1972 s 58; the Consumer Credit Act 1974 s 192(3)(b), Sch 5 Pt I; the Statute Law (Repeals) Act 1989; and the Police (Property) Act 1997 s 4(1)). See *Haley v Chief Constable of Northumbria Police* [2002] EWHC 1942 (Admin), [2002] All ER (D) 432 (Jul); *R (on the application of Carter) v Ipswich Magistrates' Court* [2002] EWHC 332 (Admin), [2002] All ER (D) 110 (Feb); *R (on the application of Morgan) v Dyfed Powys Magistrates' Court* [2003] All ER (D) 226 (Jun).

5 For the meaning of 'month' see PARA 140 note 17 ante.

6 Police (Property) Act 1897 s 1(2). See also *Irving v National Provincial Bank Ltd* [1962] 2 QB 73, [1962] 1 All ER 157, CA. Support for the view that the rights of the true owner in conversion, or under the Torts (Interference with Goods) Act 1977, survive the making of an order is, however, found in *Davis v Hampshire Police Authority* (30 November 1978, unreported): see TORT vol 45(2) (Reissue) PARAS 565, 609.

7 As to these powers see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 388, 481.

8 Police (Property) Act 1897 s 2A(1) (s 2A added by the Police Reform Act 2002 s 77(1); Police (Property) Act 1897 s 2A(1) amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 para 2(1), (2)). In relation to property that has come into the possession of the Serious Organised Crime Agency the reference in the Police (Property) Act 1897 s 1(1) (see the text to notes 2-4 supra) to an officer of police is a reference to a member of the staff of that Agency: s 2A(2)(a) (as so added; and amended by the Serious Organised Crime and Police Act 2005 Sch 4 para 2(1), (2), (3)(a)). As to the Serious Organised Crime Agency see PARA 430 et seq ante.

9 *Winter v Bancks* (1901) 65 JP 468. As to conversion see TORT vol 45(2) (Reissue) PARA 542 et seq.

10 *Betts v Metropolitan Police District Receiver and Carter Paterson & Co Ltd* [1932] 2 KB 595.

11 See *Sutcliffe v Chief Constable of West Yorkshire* [1996] RTR 86, (1995) 159 JP 770, CA.

## UPDATE

### 520 Disposal of property in police possession

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(6) PROPERTY IN POLICE POSSESSION/521. Regulations.

### 521. Regulations.

A Secretary of State<sup>1</sup> may make regulations<sup>2</sup> for the disposal of property which has come into the possession of the police in connection with their investigation of a suspected offence in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect to it<sup>3</sup>. The regulations may authorise the sale of any such property, and the application of the proceeds of any such sale, and the application of any

money of which the owner cannot be ascertained, to all or any of the following purposes: (1) the expenses of executing the regulations<sup>4</sup>; (2) the payment of reasonable compensation to any person by whom the property has been delivered into the possession of the police<sup>5</sup>; (3) the making of payments for the benefit of discharged prisoners or of persons dependent on prisoners or discharged prisoners<sup>6</sup>; or (4) such other purposes as the Secretary of State may consider expedient<sup>7</sup>. The regulations may also provide that where, in the case of property other than money: (a) the property has remained in the possession of the police for a year<sup>8</sup>; (b) the police would under the regulations have power to sell the property<sup>9</sup>; (c) in the opinion of the police authority<sup>10</sup>, the property can be used for police purposes<sup>11</sup>; and (d) the police authority determines, in such manner as may be prescribed by the regulations, that the property is to be retained by the authority<sup>12</sup>, the police authority is to become the owner of the property on the making of the determination or at such later time as the regulations may specify<sup>13</sup>. The regulations may also provide for the investment of money and for the audit of accounts<sup>14</sup>. The regulations must apply whether the property to which they relate has come into the possession of the police before or after the making of the regulations<sup>15</sup>.

Where the property is a perishable article or its custody involves unreasonable expense or inconvenience it may be sold at any time, but the proceeds of sale must not be disposed of until they have remained in the possession of the police for a year. In any other case the property must not be sold until it has remained in the possession of the police for a year<sup>16</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 The power to make regulations is exercisable by statutory instrument; and a statutory instrument made in the exercise of this power is subject to annulment in pursuance of a resolution of either House of Parliament: Police (Property) Act 1897 s 2(6) (substituted by the Police (Property) Act 1997 s 1(4)).

3 Police (Property) Act 1897 s 2(1). As to the regulations that have been made see the Police (Property) Regulations 1997, SI 1997/1908; and PARA 522 post. In relation to property that has come into the possession of the Serious Organised Crime Agency references in the Police (Property) Act 1897 s 2 (as amended) to the property remaining in the possession of the police are references to its remaining in the possession of that Agency: s 2A(2)(b) (s 2A added by the Police Reform Act 2002 s 77(1); Police (Property) Act 1897 s 2A(2)(b) amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 para 2(1), (2), (3)(b)). As to the Serious Organised Crime Agency see PARA 430 et seq ante.

4 Police (Property) Act 1897 s 2(2)(a).

5 Ibid s 2(2)(b).

6 Ibid s 2(2)(c).

7 Ibid s 2(2)(d).

8 Ibid s 2(2A)(a) (s 2(2A) added by the Police (Property) Act 1997 s 1(2), (3)).

9 Police (Property) Act 1897 s 2(2A)(b) (as added: see note 8 supra).

10 For the meaning of 'police authority' see PARA 139 note 1 ante. In relation to property that has come into the possession of the Serious Organised Crime Agency reference in ibid s 2(2A) (as added) to the police authority is to be taken as reference to that Agency: see s 2A(3)(a) (s 2A as added (see note 3 supra); s 2A(3)(a) amended by the Serious Organised Crime and Police Act 2005 Sch 4 para 2(1), (2), (4)(a)).

11 Police (Property) Act 1897 s 2(2A)(c), 2(2B) (s 2(2A) as added (see note 8 supra); s 2(2B) added by the Police (Property) Act 1997 s 1(2), (3); and substituted by the Police Reform Act 2002 s 77(2)). In relation to property that has come into the possession of the Serious Organised Crime Agency the reference to police purposes is to be taken as a reference to the purposes of that Agency: see the Police (Property) Act 1897 s 2A(3)(b) (s 2A as added (see note 3 supra); s 2A(3)(b) amended by the Serious Organised Crime and Police Act 2005 Sch 4 para 2(1), (2), (4)(b)). 'Police purposes' is not defined in the Police (Property) Act 1897, but for the meaning of 'police purposes' in the Police Act 1996 see PARA 217 note 2 ante.

12 Police (Property) Act 1897 s 2(2A)(d), 2(2B) (s 2(2A) as added (see note 8 supra); s 2(2B) as added and substituted (see note 11 supra)). The regulations may also provide for the publication of determinations falling within s 2(2A)(d) (as added): s 2(4A) (added by the Police (Property) Act 1997 s 1(2), (3)).

13 Police (Property) Act 1897 s 2(2A), 2(2B) (s 2(2A) as added (see note 8 supra); s 2(2B) as added and substituted (see note 11 supra)).

14 Ibid s 2(4).

15 Ibid s 2(5) (amended by the Statute Law Revision Act 1908).

16 Police (Property) Act 1897 s 2(3).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(6) PROPERTY IN POLICE POSSESSION/522. Sale and disposal of property.

## **522. Sale and disposal of property.**

Certain property<sup>1</sup> (other than money) may be sold after the expiration of a certain period<sup>2</sup>. The proceeds of all sales<sup>3</sup> and any money<sup>4</sup> must be paid to the relevant authority<sup>5</sup> and kept in a separate account to be called the Police Property Act Fund<sup>6</sup>. The Fund or any part of it, may be invested as the relevant authority thinks fit and the income derived from the investments must be added to and become part of the Fund<sup>7</sup>. The moneys, including income from investments standing to the credit of the Fund are applicable<sup>8</sup>: (1) to defray expenses incurred in the conveyance, storage and safe custody of the property and in connection with its sale and otherwise in executing these provisions<sup>9</sup>; (2) to pay reasonable compensation, the amount of which must be fixed by the relevant authority, to persons by whom property has been delivered to the police<sup>10</sup>; (3) to make payments of such amounts as the relevant authority may determine for such charitable purposes as it may select<sup>11</sup>. The chief officer of police (or, in the case of property in the possession of the Serious Organised Crime Agency, the Director General of that Agency) may, at the request of the relevant authority, exercise the powers and perform the duties of the authority under the above provisions<sup>12</sup>. The Fund must be audited by an auditor nominated for that purpose by the relevant authority<sup>13</sup>.

After the expiration of a certain period<sup>14</sup>, if in the opinion of the relevant authority property to which these provisions apply (other than money) can be used for police purposes, the relevant authority may determine that the property is to be retained by the authority and the property is to vest in it on the making of the determination<sup>15</sup>. Such a determination must be recorded in writing and published in such manner as the authority thinks fit and that record must include the date on which the determination is made<sup>16</sup>. No such determination may be made in relation to any property if an order relating to the application of proceeds of forfeited property has been made<sup>17</sup>.

If the chief officer of police (or, in the case of property in the possession of the Serious Organised Crime Agency, the Director General of that Agency) is satisfied that the nature of any property to which these provisions apply is such that it is not in the public interest that it should be sold or retained, it must be destroyed or otherwise disposed of in accordance with his directions<sup>18</sup>.

1 Subject to the Police (Property) Regulations 1997, SI 1997/1908, reg 5 (as amended), reg 4 applies to property in the possession of the police to which the Police (Property) Act 1897 applies (see PARA 520 ante) in respect of which the owner has not been ascertained and no order of a competent court has been made: Police (Property) Regulations 1997, SI 1997/1908, reg 4(1). Subject to the Police (Property) Act 1897 s 2(3) (see PARA 521 ante), property to which the Police (Property) Regulations 1997, SI 1997/1908, reg 4 applies must not be disposed of until it has remained in the possession of the police for a year: reg 4(2).

Regulation 5 applies to property which is in the possession of the police by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 143 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 481) and in respect of which no application by a claimant has been made within six months of the making of the order under that provision or no such application has succeeded: Police (Property) Regulations 1997, SI 1997/1908,



reg 5(1) (amended by SI 2002/2313). Subject to the Police (Property) Act 1897 s 2(3) (see PARA 521 ante), property to which the Police (Property) Regulations 1997, SI 1997/1908, reg 5 (as amended) applies must not be disposed of until the expiration of six months from the date on which the order in respect of property was made under that provision on the conviction of an offender or, if an application by a claimant of the property has been made within that period or the offender has appealed against the conviction or sentence, until that application or appeal has been determined: reg 5(2). For the meaning of 'month' see PARA 140 note 17 ante.

2 Ibid reg 6(1). As to the period referred to in the text see reg 4(2) or reg 5(2) (see note 1 supra).

3 Ie under the Police (Property) Regulations 1997, SI 1997/1908 (as amended).

4 Ie to which the Police (Property) Regulations 1997, SI 1997/1908 (as amended) apply.

5 'The relevant authority' means: (1) in relation to a police area in England and Wales listed in the Police Act 1996 s 1, Sch 1 (as amended) (see PARA 136 ante) or the City of London police area, the police authority; (2) in relation to the Serious Organised Crime Agency, the Board of that Agency; (3) in relation to the metropolitan police district, the Metropolitan Police Authority: Police (Property) Regulations 1997, SI 1997/1908, reg 3 (definition amended by SI 2000/1549; SI 2002/2313; SI 2006/594). For the meaning of 'police authority' see PARA 139 note 1 ante. As to the City of London police area see PARA 138 ante. As to the Serious Organised Crime Agency see PARA 430 et seq ante. As to the metropolitan police district and the Metropolitan Police Authority see PARA 137 ante.

6 Police (Property) Regulations 1997, SI 1997/1908, reg 6(2).

7 Ibid reg 6(3).

8 Ibid reg 6(4).

9 Ibid reg 6(4)(a).

10 Ibid reg 6(4)(b).

11 Ibid reg 6(4)(c).

12 Ibid reg 6(5) (amended by SI 2002/2313; SI 2006/594). For the meaning of 'chief officer of police' see PARA 105 note 7 ante. As to the Director General of the Serious Organised Crime Agency see PARA 437 ante.

13 Police (Property) Regulations 1997, SI 1997/1908, reg 6(6).

14 Ie the period referred to in ibid reg 4(2) or reg 5(2) (see note 1 supra), as applicable: see reg 7(1).

15 Ibid reg 7(1). 'Police purposes' is not defined, but for the meaning of 'police purposes' in the Police Act 1996 see PARA 217 note 2 ante.

16 Police (Property) Regulations 1997, SI 1997/1908, reg 7(2). For the meaning of 'writing' see PARA 115 note 9 ante.

17 Ibid reg 7(3) (amended by SI 2002/2313). The order referred to in the text is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 145: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 481.

18 Police (Property) Regulations 1997, SI 1997/1908, reg 8 (amended by SI 2002/2313; SI 2006/594).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(7) MISCELLANEOUS OTHER FUNCTIONS/523. Protection of constables executing warrants.

## **(7) MISCELLANEOUS OTHER FUNCTIONS**

### **523. Protection of constables executing warrants.**

In executing a warrant a constable<sup>1</sup> must act strictly according to its terms, otherwise he will be liable to a claim against him<sup>2</sup>. If he acts in obedience to a warrant issued by a justice of the

peace, he has a good defence in any proceedings for tort<sup>3</sup> which may be brought against him<sup>4</sup>, notwithstanding some defect in the justice's jurisdiction, provided that the constable complies within six days<sup>5</sup> with any written demand for a sight of and an opportunity to copy the warrant<sup>6</sup>.

1 As to the office of constable see PARA 101 et seq ante. As to the execution of warrants see the Police and Criminal Evidence Act 1984 s 16; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 880.

2 See *Money v Leach* (1765) 3 Burr 1742; *Price v Messenger* (1800) 2 Bos & P 158; *Parton v Williams* (1820) 3 B & Ald 330; *Crozier v Cundey* (1827) 6 B & C 232; *Hoye v Bush* (1840) 1 Man & G 775; *Horsfield v Brown* [1932] 1 KB 355; *Chic Fashions (West Wales) Ltd v Jones* [1968] 2 QB 299, [1968] 1 All ER 229, CA; *Ghani v Jones* [1970] 1 QB 693, [1969] 3 All ER 1700, CA. There is an implied power to restrain persons if it is necessary to ensure the safe and effective exercise of the warrant: *Connor v Chief Constable of Merseyside Police* [2006] EWCA Civ 1549, [2006] All ER (D) 293 (Nov), CA.

3 As to the restriction to proceedings in tort see *Anon* (undated) cited in Bull NP at 24b; *Milward v Ciffin* (1799) 2 Wm BI 1330; *Fletcher v Wilkins* (1805) 6 East 283; and cf *Pearson v Roberts* (1755) Willes 668; *Harper v Carr* (1797) 7 Term Rep 270. See also, on a similar question under the Public Health Act 1875 s 264 (repealed), *Midland Rly Co v Withington Local Board* (1883) 11 QBD 788, CA. See, however, Application 28867/03 *Keegan v United Kingdom* (2006) 21 BHRC 189, [2006] All ER (D) 235 (Jul), ECtHR.

4 As to the liability of members of police forces in respect of things done in the execution or purported execution of duty, and as to the vicarious liability of chief officers, see the Police Act 1996 s 88 (as amended); and PARA 105 ante.

5 A constable is protected if he complies with the demand for a copy of the warrant before the claim is brought even though the six days have elapsed: *Jones v Vaughan* (1804) 5 East 445. For a case in which a substantial although not a literal compliance was held to be sufficient see *Atkins v Kilby* (1840) 11 Ad & El 777.

6 See the Constables Protection Act 1750 s 6 (amended by the Statute Law Revision Act 1888; and the Statute Law Revision Act 1948). A constable is protected if he obeys an unlawful warrant, but not if he executes a lawful warrant in an unlawful way: *Horsfield v Brown* [1932] 1 KB 355. See also *Palmer v Crone* [1927] 1 KB 804, where no demand for a copy of the warrant was made and the constable was protected from a claim for damages for seizing goods under an illegal distress warrant. The protection afforded by the Constables Protection Act 1750 s 6 (as amended) extends to any person acting by order or in aid of a constable (see *Jones v Chapman* (1845) 14 M & W 124), and also extends to persons other than constables to whom a warrant is addressed.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(7) MISCELLANEOUS OTHER FUNCTIONS/524. Road traffic functions.

## 524. Road traffic functions.

As part of their general duty to preserve law and order and to protect life and property<sup>1</sup>, constables<sup>2</sup> have for a long time been engaged in the regulation of road traffic and in the enforcement of the law relating to vehicles and the driving of vehicles. These general powers and duties have been reinforced by certain statutory provisions<sup>3</sup>.

In particular, a constable engaged in the regulation of road traffic may give directions with which drivers of vehicles and pedestrians must comply<sup>4</sup>. It is an offence for the driver of a mechanically propelled vehicle or a cyclist not to stop when so required by a constable in uniform<sup>5</sup>. Constables may require the production of driving licences and certain other documents<sup>6</sup>. A duly authorised constable may require a motor vehicle or trailer to be weighed, either laden or unladen<sup>7</sup>. In certain circumstances a constable may seize a vehicle; or remove, or arrange for the removal of, a vehicle from a road; or arrange for immobilisation of the vehicle<sup>8</sup>.

A constable may test a vehicle on a road as to certain matters concerned with roadworthiness if authorised to act as an examiner by, or on behalf of, his chief officer of police<sup>9</sup>.

A constable who has reason to suspect that the driver of a vehicle may be committing the offence of driving with uncorrected defective eyesight may require him to submit to a sight test<sup>10</sup>. Constables have statutory powers and functions under the law relating to the driving of vehicles by persons under the influence of drink or drugs<sup>11</sup>.

A constable or a person acting under the specific or general instructions of the chief officer of police may erect traffic signs both for giving effect to local traffic regulations, and as may be necessary or expedient to prevent or mitigate congestion or obstruction of traffic, or danger to or from traffic, in consequence of extraordinary circumstance<sup>12</sup>.

Where by reason of any emergency the use of any road (not being a motorway) by any excluded traffic<sup>13</sup> is rendered impossible or unsuitable, the chief officer of police of the police area in which a motorway or any part of a motorway is situated, or any officer of or above the rank of superintendent authorised in that behalf by that chief officer, may<sup>14</sup>: (1) authorise any excluded traffic to use that motorway or that part of a motorway as an alternative road for the period during which the use of the other road by such traffic continues to be impossible or unsuitable<sup>15</sup>; and (2) relax any prohibition or restriction imposed<sup>16</sup> in so far as he considers it necessary to do so in connection with the use of that motorway or that part of a motorway by excluded traffic in pursuance of any such authorisation as aforesaid<sup>17</sup>.

Where police have taken control of a hazardous road traffic situation, they may owe a duty of care to road users<sup>18</sup>.

1 As to such duty see PARA 478 ante.

2 As to the office of constable see PARA 101 et seq ante. As to the exercise of road traffic functions by traffic wardens see PARA 169 ante.

3 As to the law relating to vehicles and driving generally see ROAD TRAFFIC.

4 See the Road Traffic Act 1988 s 35 (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 642. As to the extension of the provisions relating to traffic offences to certain dock roads see the Port of London Act 1968 s 199 (substituted by the Port of London Act 1982 s 4; and amended by the Finance Act 1995 s 162, Sch 29 Pt V(1)).

5 See the Road Traffic Act 1988 s 163 (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 646. See also *Beard v Wood* [1980] RTR 454, [1980] Crim LR 384. For powers of constable to detain the stopped vehicle see *Lodwick v Sanders* [1985] 1 All ER 577, [1985] 1 WLR 382. As to what amounts to 'driving' see *Leach v DPP* [1993] RTR 161. As to police power to set up road blocks see the Police and Criminal Evidence Act 1984 s 4 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 867.

6 See the Transport Act 1968 s 99(1) (as amended); the Public Passenger Vehicles Act 1981 s 66A (as added and amended) (issue of false documents); the Road Traffic Act 1988 s 164 (as amended) (driving licence), s 165 (as amended) (insurance certificate, test certificate and plating certificate); the Goods Vehicles (Licensing of Operators) Act 1995 ss 40-42 (ss 41, 42 as amended) (operator's licence); and ROAD TRAFFIC.

7 See the Road Traffic (Foreign Vehicles) Act 1972 s 1 (as amended); the Road Traffic Act 1988 s 78; the Weighing of Motor Vehicles (Use of Dynamic Axle Weighing Machines) Regulations 1978, SI 1978/1180; and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 697; ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1644.

8 See the Removal and Disposal of Vehicles Regulations 1986, SI 1986/183 (as amended); the Road Traffic Act 1988 ss 165A, 165B (both as added); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 649; ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 870 et seq.

9 See *ibid* s 67 (as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 684. A constable has similar but not identical powers to test the condition of used vehicles at sale rooms etc: see s 77; and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 696.

10 See *ibid* s 96; and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 461.

11 See *ibid* s 3A (as added), ss 4-11 (as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 974 et seq.

12 See the Road Traffic Regulation Act 1984 ss 66, 67 (both as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARAS 832, 833. A district council to which the Town Police Clauses Act 1847 s 21 (as amended) has been applied may give orders for the routes to be observed by vehicles and persons in times of public processions, rejoicings or illuminations and may give certain directions to the constables for keeping order: see s 21 (amended by the Criminal Justice Act 1982 ss 37, 39, 46, Sch 3); and the Local Government Act 1972 s 179(3). As to the construction of the Town Police Clauses Act 1847 s 21 (as amended) see *Dudderidge v Rawlings* (1912) 77 JP 167. As to the erection of traffic signs by highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 559, 595.

13 'Excluded traffic' means traffic which is not traffic of Class I or II: see the Motorways Traffic (England and Wales) Regulations 1982, SI 1982/1163, reg 3(1)(d). As to traffic of Classes I, II see the Highways Act 1980 s 17, Sch 4; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 736.

14 Motorways Traffic (England and Wales) Regulations 1982, SI 1982/1163, reg 15(3). For the meaning of 'chief officer of police' see PARA 105 note 7 ante. As to ranks see PARA 230 ante.

15 Ibid reg 15(3)(a).

16 Ie by the Motorways Traffic (England and Wales) Regulations 1982, SI 1982/1163.

17 Ibid reg 15(3)(b).

18 *Gibson v Chief Constable of Strathclyde Police* (1999) Times, 11 May, Ct of Sess.

## UPDATE

### **524-526 Road traffic functions ... Employment of police for private purposes and on extraneous duties**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **524-525 Road traffic functions, Police vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(7) MISCELLANEOUS OTHER FUNCTIONS/525. Police vehicles.

## **525. Police vehicles.**

No statutory provision imposing a speed limit on motor vehicles<sup>1</sup> applies to any vehicle on an occasion when it is being used for police purposes or for the purposes of the Serious Organised Crime Agency<sup>2</sup> if the observance of that provision would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion<sup>3</sup>. This exemption does not, however, affect the liability of the police for dangerous or careless driving or other civil liability in case of an accident<sup>4</sup>.

Vehicles used for police purposes do not need to be insured against third party risks<sup>5</sup>; nor do such vehicles or vehicles used for Agency purposes require a licence for the conveyance of goods<sup>6</sup>. Vehicles used for police or Agency purposes may be fitted with a gong, bell, siren or two-tone horn and are exempt from the prohibition on the sounding of these between 11.30 pm

and 7 am if it is necessary or desirable to indicate to other road users the urgency of the particular policing purpose for which they are being used or to give warning to other road users of the presence of the vehicle on the road<sup>7</sup>. Only certain vehicles, including ones used for police or Agency purposes, may be fitted with a lamp or illuminated sign that automatically emits a flashing light<sup>8</sup>, and only those vehicles may be fitted with a blue warning beacon or special warning lamp<sup>9</sup>.

A person in the service of the Crown and a police officer acting in the execution of his duty may not be charged a toll in respect of the use of certain ferries<sup>10</sup>.

1 'Motor vehicle' means a mechanically propelled vehicle intended or adapted for use on roads: see the Road Traffic Regulation Act 1984 s 136(1); and the Road Traffic Act 1988 s 185(1).

2 The provision applies also to use for fire brigade or ambulance purposes: see the Road Traffic Regulation Act 1984 s 87(1) (as amended); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 854. As to the Serious Organised Crime Agency see PARA 430 et seq ante.

3 See ibid s 87(1)-(3) (s 87(1) renumbered, and s 87(2), (3) added, by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 para 42(1)-(3)). As from a day to be appointed these provisions are substituted by the Road Safety Act 2006 s 19. At the date at which this volume states the law no such day had been appointed.

Although the Road Traffic Regulation Act 1984 s 87 (as amended; prospectively substituted) is not wide enough to cover all use of a police vehicle in the course of a policeman's duties and does not necessarily include the use of a vehicle for travelling to a place where a police duty or purpose is to be carried out, it covers a case where the carrying out of that duty would be hindered by compliance with speed restrictions: *Aitken v Yarwood* [1965] 1 QB 327, [1964] 2 All ER 537. See ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 854. As to officers' powers to contravene other traffic regulations see *George v Garland* [1980] RTR 77.

4 *Gaynor v Allen* [1959] 2 QB 403, [1959] 2 All ER 644; *Wood v Richards* [1977] RTR 201, [1977] Crim LR 295. As to the civil liability of constables and the vicarious liability of chief officers see PARA 105 ante.

5 See the Road Traffic Act 1988 s 144(2)(b) (amended by the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 61, Sch 34 Pt VII). The exemption applies to a vehicle owned by a police authority at a time when it is being driven under the owner's control, or to a vehicle at a time when it is being driven for police purposes by or under the direction of a constable, or by a person employed by a police authority: Road Traffic Act 1988 s 144(2)(b) (as so amended). It includes a police officer who is on duty and using his own vehicle for police purposes: see *Jones v Chief Constable of Bedfordshire* [1987] RTR 332, [1987] Crim LR 502. For the meaning of 'police authority' see PARA 139 note 1 ante. As to the office of constable see PARA 101 et seq ante.

6 See the Goods Vehicles (Licensing of Operators) Act 1995 s 2(1), (2)(d); and the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 33, Sch 3 para 6 (amended by SI 2006/594).

7 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, regs 37(5)(a)-(ab), 99(5)(a) (reg 37(5)(aa), (ab) added by SI 2006/594).

8 See the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 13. As to the general regulation of lighting equipment see the Road Traffic Act 1988 s 41 (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARAS 260, 378 et seq.

9 See the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 16.

10 See the Ferries (Acquisition by Local Authorities) Act 1919 s 4; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 903. As to the exemption at common law of servants of the Crown from customary tolls see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 49.

## UPDATE

### 524-526 Road traffic functions ... Employment of police for private purposes and on extraneous duties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

#### **524-525 Road traffic functions, Police vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(7) MISCELLANEOUS OTHER FUNCTIONS/526. Employment of police for private purposes and on extraneous duties.

#### **526. Employment of police for private purposes and on extraneous duties.**

Certain extraneous duties have been placed on the police by statute, and at various times duties connected and unconnected with police work have by custom or arrangement been undertaken by particular police forces<sup>1</sup>. The Secretary of State<sup>2</sup> may prescribe the duties which are or are not to be performed by members of police forces<sup>3</sup>. In particular, certain business interests are incompatible with membership of a police force or preclude appointment to a police force<sup>4</sup>.

1 Eg before the 1939-45 war there were police fire brigades in some areas. A member of a police force may not now be employed by a fire and rescue authority: Fire and Rescue Services Act 2004 s 37. As to fire and rescue authorities see FIRE SERVICES.

2 As to the Secretary of State see PARA 107 note 15 ante.

3 See the Police Act 1996 s 50(2)(h); and PARA 228 ante. For the meaning of 'police force' see PARA 102 note 11 ante.

4 See the Police Regulations 2003, SI 2003/527, regs 7-9 (reg 8 as amended); and PARAS 232, 394 ante. As to the limitations on duties to be assigned to members statutorily transferred see reg 21; and PARA 396 ante. As to the provision of special services by police forces see the Police Act 1996 s 25 (as amended); and PARA 193 ante.

#### **UPDATE**

#### **524-526 Road traffic functions ... Employment of police for private purposes and on extraneous duties**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(7) MISCELLANEOUS OTHER FUNCTIONS/527. Criminal prosecutions.

#### **527. Criminal prosecutions.**

Although the police may institute proceedings, it is the duty of the Director of Public Prosecutions<sup>1</sup> to take over the conduct of all criminal proceedings instituted on behalf of a police force<sup>2</sup>, whether by a member of that force or by another person<sup>3</sup>. It is also the duty of the Director of Public Prosecutions to give, to such extent as he considers appropriate, advice to police forces on all matters relating to criminal offences<sup>4</sup>.

The Attorney General may make regulations requiring the chief officer of any police force to which the regulations are expressed to apply to give to the Director of Public Prosecutions information with respect to every offence prescribed by the regulations which is alleged to have been committed in his area and in respect of which it appears to him that there is a prima facie case for proceedings, and the regulations may also require the chief officer to give the Director such information as the Director may require with respect to such cases or classes of case as he may from time to time specify<sup>5</sup>.

The chief officer of police<sup>6</sup> of every police force must, at such times and in such form as the Secretary of State may direct, transmit to the Secretary of State such particulars with respect to offences, offenders, criminal proceedings and the state of crime in the chief officer's police area<sup>7</sup> as the Secretary of State may require<sup>8</sup>.

1     le subject to any provisions contained in the Criminal Justice Act 1987. As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1066.

2     'Police force' means any police force maintained by a police authority under the Police Act 1996 and any other body of constables for the time being specified by order made by the Secretary of State for these purposes: Prosecution of Offences Act 1985 s 3(3) (definition amended by the Police Act 1996 s 103, Sch 7 para 39; the Police Act 1997 s 134(1), Sch 9 para 48; and the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 para 47, Sch 17 Pt 2). For the meaning of 'police force' see PARA 102 note 11 ante. For the meaning of 'police authority' see PARA 139 note 1 ante. As to the Secretary of State see PARA 107 note 15 ante. As to the designated bodies see the Prosecution Offences Act 1985 (Specified Police Forces) Order 1985, SI 1985/1956. As to the prosecution of offences investigated by the Serious Organised Crime Agency see PARA 467 ante.

3     See the Prosecution of Offences Act 1985 s 3(2)(a); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1080. See also *R v Metropolitan Police Comr, ex p Blackburn* [1968] 2 QB 118, [1968] 1 All ER 763, CA. The question whether there is a discretion to prosecute depends on the seriousness of the offence, and is consequently a matter of fact to be decided by the jury: *R v Coxhead* [1986] RTR 411, [1986] Crim LR 251, CA. A police officer may not induce a suspect to make a confession by holding out the prospect of not being taken to court: *R v Metropolitan Police Comr, ex p Thompson* [1997] 1 WLR 1519, [1997] 2 Cr App Rep 49 (suspect cautioned rather than charged following confession). As to obtaining admissions for a valid caution to be issued see *R v Chief Constable of Lancashire, ex p Malcolm Atkinson* (1998) 162 JP 275. As to the personal nature of a decision to prosecute see *Hawkins v Bepey* [1980] 1 All ER 797, [1980] 1 WLR 419.

4     See the Prosecution of Offences Act 1985 s 3(2)(e); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1080.

5     See *ibid* s 8; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1077. At the date at which this volume states the law no such regulations had been made.

6     For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

7     For the meaning of 'police area' see PARA 136 note 2 ante.

8     Police Act 1996 s 45(1). The Secretary of State must cause a consolidated and classified abstract of the information so transmitted to him to be prepared and laid before Parliament: s 45(2).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/5. THE PRESERVATION OF THE QUEEN'S PEACE/(7) MISCELLANEOUS OTHER FUNCTIONS/528. Control of firearms.

## 528. Control of firearms.

There are provisions relating to: (1) the possession, handling and distribution of weapons and ammunition, the prevention of crime, and measures to protect public safety<sup>1</sup>; (2) firearm and shot gun certificates and the registration of firearms dealers<sup>2</sup>; (3) law enforcement and punishment of offences<sup>3</sup>; and (4) other related issues<sup>4</sup>. The law relating to firearms, ammunition and air weapons is dealt with elsewhere in this work<sup>5</sup>.

1 See the Firearms Act 1968 Pt I (ss 1-25) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 630 et seq.

2 See ibid Pt II (ss 26A-45) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 682 et seq.

3 See ibid Pt III (ss 46-52) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 693 et seq.

4 See ibid Pt IV (ss 53-60) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 630 et seq.

5 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 630 et seq.

## UPDATE

### 528 Control of firearms

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/6. EXERCISE OF POLICE POWERS BY CIVILIANS/529. Police powers for police authority employees.

## 6. EXERCISE OF POLICE POWERS BY CIVILIANS

### 529. Police powers for police authority employees.

The chief officer of police<sup>1</sup> of any police force<sup>2</sup> may designate any person who is employed by the police authority<sup>3</sup> maintaining that force<sup>4</sup> and who is under the direction and control of that chief officer<sup>5</sup>, as an officer of one or more of the following descriptions<sup>6</sup>: (1) community support officer<sup>7</sup>; (2) investigating officer<sup>8</sup>; (3) detention officer<sup>9</sup>; (4) escort officer<sup>10</sup>; (5) staff custody officer<sup>11</sup>. A chief officer of police must not designate a person unless he is satisfied that that person: (a) is a suitable person to carry out the functions for the purposes of which he is designated<sup>12</sup>; (b) is capable of effectively carrying out those functions<sup>13</sup>; and (c) has received adequate training in the carrying out of those functions and in the exercise and performance of the powers and duties to be conferred on him by virtue of the designation<sup>14</sup>.

A person designated has the powers and duties conferred or imposed on him by the designation<sup>15</sup>. Powers and duties may be conferred or imposed on a designated person by means only of the application to him by his designation of provisions<sup>16</sup> that are to apply to the designated person<sup>17</sup>. An employee of a police authority authorised or required to do anything by virtue of a designation must not be authorised or required by virtue of that designation to engage in any conduct otherwise than in the course of that employment<sup>18</sup>; and must be so authorised or required subject to such restrictions and conditions (if any) as may be specified in his designation<sup>19</sup>.



Where any power exercisable by any person in reliance on his designation is a power which, in the case of its exercise by a constable<sup>20</sup>, includes or is supplemented by a power to use reasonable force, any person exercising that power in reliance on that designation has the same entitlement as a constable to use reasonable force<sup>21</sup>. Where any power exercisable by any person in reliance on his designation includes power to use force to enter any premises, that power is not exercisable by that person except in the company, and under the supervision, of a constable<sup>22</sup>, or for the purpose of saving life or limb or preventing serious damage to property<sup>23</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 For the meaning of 'police authority' see PARA 139 note 1 ante.

4 Police Reform Act 2002 s 38(1)(a).

5 Ibid s 38(1)(b).

6 Ibid s 38(1). As to supplementary provisions relating to designations see PARA 535 post; and as to the code of practice relating to the exercise of the power of designation see PARA 536 post. As to offences against designated persons see PARA 537 post.

7 Ibid s 38(2)(a).

8 Ibid s 38(2)(b).

9 Ibid s 38(2)(c).

10 Ibid s 38(2)(d).

11 Ibid s 38(2)(e) (prospectively added by the Serious Organised Crime and Police Act 2005 s 120(1), (2)). At the date at which this volume states the law no day had been appointed for the commencement of this provision.

References in the Police Reform Act 2002 s 38 (as amended; prospectively amended), s 42 (see PARA 535 post) or s 46(4) (see PARA 537 post) to powers and duties conferred or imposed on a designated person, or to a designated person's being authorised or required to do anything by virtue of a designation, or to a power or duty exercisable by a designated person in reliance on or by virtue of a designation are, in the case of a staff custody officer at a police station designated under the Police and Criminal Evidence Act 1984 s 35(1) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 938), references to those things in relation to him after his appointment as a custody officer for that police station under s 36(2) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 939); Police Reform Act 2002 s 38(10) (prospectively added by the Serious Organised Crime and Police Act 2005 s 120(1), (4)). At the date at which this volume states the law no day had been appointed for the commencement of this provision. 'Designated person' means a person in relation to whom a designation under the Police Reform Act 2002 s 38 (as amended; prospectively amended) or s 39 (see PARA 531 post) is for the time being in force: s 47(1).

12 Ibid s 38(4)(a) (s 38(4) amended by the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 179, 181, Sch 17 Pt 2).

13 Police Reform Act 2002 s 38(4)(b) (as amended: see note 12 supra).

14 Ibid s 38(4)(c) (as amended: see note 12 supra). As from a day to be appointed this provision is further amended so as to refer to the 'powers and duties to be conferred or imposed on him by virtue of the designation' (s 39(4)(c) (prospectively amended by the Police and Justice Act 2006 s 9, Sch 5 paras 1, 2(1), (2))); and the reference in the Police Reform Act 2002 s 38(4)(c) (as amended) to the powers and duties to be conferred or imposed on a person by virtue of his designation, so far as it is a reference to the standard powers and duties of a community support officer, is to be taken as a reference to the powers and duties that at the time of the person's designation are the standard powers and duties of a community support officer (s 38(5B) (prospectively added by the Police and Justice Act 2006 Sch 5 paras 1, 2(1), (3))). At the date at which this volume states the law no such day had been appointed. See also note 17 infra.

15 Police Reform Act 2002 s 38(5).

16 le the provisions of the applicable Part of *ibid* Sch 4 (as amended) (see note 17 *infra*).

17 *Ibid* s 38(6). For the applicable part of Sch 4: (1) in the case of a person designated as a community support officer see s 38(6)(a), Sch 4 Pt 1 (amended by the Anti-social Behaviour Act 2003 ss 23(3), (4), 33, 46(1), 89, 92, Sch 3; the Clean Neighbourhoods and Environment Act 2005 ss 62, 107, Sch 5 Pt 5; the Serious Organised Crime and Police Act 2005 ss 122, 161(5), Sch 8 Pt 1, Sch 9 paras 1-4, Sch 13 Pt 2 paras 11, 13, Sch 17 Pt 2; the Police and Justice Act 2006 ss 8, 9, Sch 5 paras 1, 5(1), (2); the Violent Crime Reduction Act 2006 s 24(6)); (2) in the case of a person designated as an investigating officer see the Police Reform Act 2002 s 38(6)(b), Sch 4 Pt 2 (amended by the Criminal Justice Act 2003 s 12, Sch 1 paras 16-19; the Serious Organised Crime and Police Act 2005 Sch 8 Pt 1 paras 1, 13-15, Sch 9 paras 1, 5, 6); (3) in the case of a person designated as a detention officer see the Police Reform Act 2002 s 38(6)(c), Sch 4 Pt 3 (amended by the Serious Organised Crime and Police Act 2005 Sch 8 Pt 1 paras 1, 16, Sch 9 paras 1, 7; the Drugs Act 2005 s 5(2)(a)); (4) in the case of a person designated as an escort officer see the Police Reform Act 2002 s 38(6)(d), Sch 4 Pt 4 (amended by the Criminal Justice Act 2003 s 12, Sch 1 paras 16, 20; the Serious Organised Crime and Police Act 2005 Sch 9 paras 1, 8, 9; the Police and Justice Act 2006 s 9, Sch 5 paras 1, 5(1), (10)); and (5) in the case of a person designated as a staff custody officer see the Police Reform Act 2002 s 38(6)(e), Sch 4 Pt 4A (s 38(6)(e) prospectively added by the Serious Organised Crime and Police Act 2005 s 120(1), (3); and the Police Reform Act 2002 Sch 4 Pt 4A prospectively added by the Serious Organised Crime and Police Act 2005 s 120(5)). At the date at which this volume states the law no day had been appointed for the commencement of the provisions mentioned in head (5) *supra*.

The Secretary of State may by order provide for provisions of the Police Reform Act 2002 Sch 4 Pt 1 (as amended) to apply to every person who is designated as a community support officer, the powers and duties so applied being known as the standard powers and duties of a community support officer: see s 38A(1), (2) (s 38A added by the Police and Justice Act 2006 s 7(2)). As to the Secretary of State see PARA 107 note 15 *ante*.

As from a day to be appointed the Police Reform Act 2002 s 38(6) (as prospectively amended) has effect subject to s 38(5A) (as prospectively added) and s 38(8) (see the text and note 21 *infra*): see s 38(6A) (prospectively added by the Police and Justice Act 2006 Sch 5 paras 1, 2). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed a person designated as a community support officer under these provisions also has the standard powers and duties of a community support officer: Police Reform Act 2002 s 38(5A) (prospectively added by the Police and Justice Act 2006 s 7(1)). At the date at which this volume states the law no such day had been appointed.

18 Police Reform Act 2002 s 38(7)(a) (s 38(7) amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 179, 181, Sch 17 Pt 2).

19 Police Reform Act 2002 s 38(7)(b) (as amended: see note 18 *supra*).

20 As to the office of constable see PARA 101 *et seq* *ante*.

21 Police Reform Act 2002 s 38(8).

22 *Ibid* s 38(9)(a).

23 *Ibid* s 38(9)(b).

## UPDATE

### 529 Police powers for police authority employees

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 17--Police Reform Act 2002 Sch 4 Pt 1 further amended: Education and Inspections Act 2006 ss 107(2), (3), 108(7) (s 108(7) in force in relation to England: SI 2007/1801).

2002 Act Sch 4 Pt 2 further amended: UK Borders Act 2007 s 47.

Day now appointed in relation to Police and Justice Act 2006 s 7(1), Sch 5 paras 1, 2, 5(1), (2), (10): SI 2007/3263.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/6. EXERCISE OF POLICE POWERS BY CIVILIANS/530. Standard powers and duties of community support officers.

### **530. Standard powers and duties of community support officers.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for provisions<sup>3</sup> relating to the powers capable of being exercised by a community support officer to apply to every person who<sup>4</sup> is designated as a community support officer<sup>5</sup>. The powers and duties conferred or imposed by the provisions for the time being so applied are to be known as the standard powers and duties of a community support officer<sup>6</sup>.

If an such order confers or imposes additional powers and duties on a person who is under the direction and control of a chief officer of police<sup>7</sup> of a police force<sup>8</sup>, that chief officer must ensure that the person receives adequate training in the exercise and performance of the additional powers and duties<sup>9</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 The Secretary of State must not make an order containing (with or without any other provision) any provision authorised by the Police Reform Act 2002 s 38A(1) (as added) unless a draft of that order has been laid before Parliament and approved by a resolution of each House: s 38A(4) (s 38A added by the Police and Justice Act 2006 s 7(2)) The power to make such an order is exercisable by statutory instrument: Police Reform Act 2002 s 105(1). An order may make different provision for different cases; make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: s 105(4). At the date at which this volume states the law no such order had been made.

3 Ie provisions of ibid Sch 4 Pt 1 (as amended): see PARA 529 note 17 ante.

4 Ie under ibid s 38 (as amended; prospectively amended): see PARA 529 ante.

5 Ibid s 38A(1) (as added: see note 2 supra). Before making an order, the Secretary of State must consult with the Association of Police Authorities and the Association of Chief Police Officers: s 38A(3) (as so added). As to consultation with the Association of Police Authorities and the Association of Chief Police Officers see PARA 163 note 7 ante. As to the Association of Chief Police Officers see PARA 423 ante.

6 Ibid s 38A(2) (as added: see note 2 supra). A provision of Sch 4 Pt 1 (as amended) may be applied to a person concurrently by an order under s 38A(1) (as added) and a designation under s 38 (as amended; prospectively amended) (see PARA 529 ante): s 38A(5) (as so added).

7 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

8 For the meaning of 'police force' see PARA 102 note 11 ante.

9 Police Reform Act 2002 s 38A(6) (as added: see note 2 supra).

## **UPDATE**

### **530 Standard powers and duties of community support officers**

TEXT AND NOTES 1-5--The Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007, SI 2007/3202, has been made under the 2002 Act s 38A(1).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/6. EXERCISE OF POLICE POWERS BY CIVILIANS/531. Police powers for contracted-out staff.

### **531. Police powers for contracted-out staff.**

If a police authority<sup>1</sup> has entered into a contract with a person ('the contractor') for the provision of services relating to the detention or escort of persons who have been arrested or are otherwise in custody<sup>2</sup>, the chief officer of police<sup>3</sup> of the police force<sup>4</sup> maintained by that police authority may designate any person who is an employee of the contractor as either or both: (1) a detention officer<sup>5</sup>; or (2) an escort officer<sup>6</sup>. A chief officer of police must not designate a person unless he is satisfied that that person is a suitable person to carry out the functions for the purposes of which he is designated<sup>7</sup>, is capable of effectively carrying out those functions<sup>8</sup>, and has received adequate training in the carrying out of those functions and in the exercise and performance of the powers and duties to be conferred on him by virtue of the designation<sup>9</sup>. A chief officer of police must not designate a person unless he is satisfied that the contractor is a fit and proper person to supervise the carrying out of the functions for the purposes of which that person is designated<sup>10</sup>.

A person so designated has the powers and duties conferred or imposed on him by the designation<sup>11</sup>. Powers and duties may be conferred or imposed on a designated person<sup>12</sup> by means only of the application to him by his designation of provisions<sup>13</sup> that are to apply to the designated person<sup>14</sup>. An employee of the contractor authorised or required to do anything by virtue of a designation is not authorised or required by virtue of that designation to engage in any conduct otherwise than in the course of that employment<sup>15</sup>; and is so authorised or required subject to such restrictions and conditions (if any) as may be specified in his designation<sup>16</sup>. Where any power exercisable by any person in reliance on his designation is a power which, in the case of its exercise by a constable<sup>17</sup>, includes or is supplemented by a power to use reasonable force, any person exercising that power in reliance on that designation has the same entitlement as a constable to use reasonable force<sup>18</sup>.

A designation, unless it is previously withdrawn or ceases to have effect<sup>19</sup>, remains in force for such period as may be specified in the designation; but it may be renewed at any time with effect from the time when it would otherwise expire<sup>20</sup>.

The Secretary of State<sup>21</sup> may by regulations<sup>22</sup> make provision for the handling of complaints relating to, or other instances of misconduct involving, the carrying out by any person designated under these provisions of the functions for the purposes of which any power or duty is conferred or imposed by his designation<sup>23</sup>. Before making such regulations, the Secretary of State must consult with the Association of Police Authorities<sup>24</sup>, the Association of Chief Police Officers<sup>25</sup>, the Independent Police Complaints Commission<sup>26</sup>, and such other persons as he thinks fit<sup>27</sup>.

1 For the meaning of 'police authority' see PARA 139 note 1 ante.

2 Police Reform Act 2002 s 39(1).

3 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

4 For the meaning of 'police force' see PARA 102 note 11 ante.

5 Police Reform Act 2002 s 39(2)(a).

6 Ibid s 39(2)(b). As to supplementary provisions relating to designations see PARA 535 post; and as to the code of practice relating to the exercise of the power of designation see PARA 536 post. As to offences against designated persons see PARA 537 post.

7 Ibid s 39(4)(a).

- 8 Ibid s 39(4)(b).
- 9 Ibid s 39(4)(c).
- 10 Ibid s 39(5).
- 11 Ibid s 39(3).
- 12 For the meaning of 'designated person' see PARA 529 note 11 ante.
- 13 The provisions of the applicable Part of the Police Reform Act 2002 Sch 4 (as amended): see note 14 infra; and PARA 529 note 17 ante.
- 14 Ibid s 39(6). As to the applicable Part of Sch 4 (as amended), in the case of a person designated as a detention officer, see s 39(6)(a), Sch 4 Pt 3 (as amended); and, in the case of a person designated as an escort officer, see s 39(6)(b), Sch 4 Pt 4 (as amended).
- 15 Ibid s 39(7)(a). 'Conduct' includes omissions and statements: s 47(1).
- 16 Ibid s 39(7)(b).
- 17 As to the office of constable see PARA 101 et seq ante.
- 18 Police Reform Act 2002 s 39(8).
- 19 A designation ceases to have effect if the designated person ceases to be an employee of the contractor (ibid s 39(13)(a)); or if the contract between the police authority and the contractor is terminated or expires (s 39(13)(b)).
- 20 Ibid s 39(12).
- 21 As to the Secretary of State see PARA 107 note 15 ante.
- 22 The power to make regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: see the Police Reform Act 2002 s 105(1), (2). Regulations may make different provision for different cases; make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: see s 105(4). See note 23 infra.
- 23 Ibid s 39(9). Regulations under s 39(9) may, in particular, provide that any provision made by Pt 2 (ss 9-29) (as amended) (see PARA 316 et seq ante) with respect to complaints against persons serving with the police is to apply, with such modifications as may be prescribed by them, with respect to complaints against persons designated: s 39(10). The Police Reform Act 2002 Pt 2 (as amended) and the Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, apply in relation to a detention officer or escort officer as they apply in relation to a person serving with the police: reg 28(1). However, this applies only in so far as a complaint relates to, or another instance of misconduct involves, the carrying out of functions for the purposes of which any power or duty is conferred or imposed by a designation under the Police Reform Act 2002 s 39(2) (see the text to notes 3-6 supra): Police (Complaints and Misconduct) Regulations 2004, SI 2004/643, reg 28(2). See further PARA 327 note 7 ante.
- 24 Police Reform Act 2002 s 39(11)(a) (s 39(11)(a), (b) substituted by the Police and Justice Act 2006 s 6(1), Sch 4 para 13). As to consultation with the Association of Police Authorities see PARA 163 note 7 ante.
- 25 Police Reform Act 2002 s 39(11)(b) (as substituted: see note 24 supra). As to consultation with the Association of Chief Police Officers see PARA 163 note 7 ante. As to the Association of Chief Police Officers see PARA 423 ante.
- 26 Ibid s 39(11)(c). As to the Independent Police Complaints Commission see PARA 316 ante.
- 27 Ibid s 39(11)(d).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/6. EXERCISE OF POLICE POWERS BY CIVILIANS/532. Community safety accreditation schemes.

### 532. Community safety accreditation schemes.

The chief officer of police<sup>1</sup> of any police force<sup>2</sup> may, if he considers that it is appropriate to do so for the specified purposes, establish and maintain a community safety accreditation scheme<sup>3</sup>. The specified purposes are: (1) contributing to community safety and security<sup>4</sup>; and (2) in co-operation with the police force for the area, combating crime and disorder, public nuisance and other forms of anti-social behaviour<sup>5</sup>.

Before establishing a community safety accreditation scheme for his police area, a chief officer of any police force (other than the Metropolitan Police Commissioner<sup>6</sup>) must consult with the police authority maintaining that force<sup>7</sup> and every local authority any part of whose area lies within the police area<sup>8</sup>. Before establishing a community safety accreditation scheme for the metropolitan police district<sup>9</sup>, the Metropolitan Police Commissioner must consult with the Metropolitan Police Authority<sup>10</sup>, the Mayor of London<sup>11</sup> and every local authority any part of whose area lies within the metropolitan police district<sup>12</sup>.

Every police plan<sup>13</sup>, and every draft of such a plan which is submitted<sup>14</sup> by a chief officer of police to a police authority, must set out: (a) whether a community safety accreditation scheme is maintained for the police area in question<sup>15</sup>; (b) if not, whether there is any proposal to establish such a scheme for that area during the period to which the plan relates<sup>16</sup>; (c) particulars of any such proposal or of any proposal to modify during that period any community safety accreditation scheme that is already maintained for that area<sup>17</sup>; (d) the extent (if any) of any arrangements for specified provisions<sup>18</sup> to be applied to designated persons employed by the police authority<sup>19</sup>; and (e) the respects in which any community safety accreditation scheme that is maintained or proposed will be supplementing those arrangements during the period to which the plan relates<sup>20</sup>.

A community safety accreditation scheme must contain provision for the making of arrangements with employers who are carrying on business<sup>21</sup> in the police area in question<sup>22</sup>, or who are carrying on business in relation to the whole or any part of that area or in relation to places situated within it<sup>23</sup>, for those employers to supervise the carrying out by their employees<sup>24</sup> of the community safety functions<sup>25</sup> for the purposes of which powers are conferred<sup>26</sup> on those employees<sup>27</sup>.

It is the duty of a chief officer of police who establishes and maintains a community safety accreditation scheme to ensure that the employers of the persons on whom powers are conferred by the grant of accreditations<sup>28</sup> have established and maintain satisfactory arrangements for handling complaints relating to the carrying out by those persons of the functions for the purposes of which the powers are conferred<sup>29</sup>.

The Secretary of State<sup>30</sup> may make regulations for the purpose of enabling the chief constable of the British Transport Police Force<sup>31</sup> to establish and maintain a railway safety accreditation scheme<sup>32</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 Police Reform Act 2002 s 40(1). A 'community safety accreditation scheme' is a scheme for the exercise in the chief officer's police area by persons accredited by him under s 41 (see PARA 533 post) of the powers conferred by their accreditations under s 41: s 40(2). For the meaning of 'police area' see PARA 136 note 2 ante. As to the code of practice relating to the exercise of these powers see PARA 536 post.

4 Ibid s 40(3)(a).

5 Ibid s 40(3)(b).

6 As to the Metropolitan Police Commissioner see PARA 183 ante.

7 Police Reform Act 2002 s 40(4)(a). For the meaning of 'police authority' see PARA 139 note 1 ante.

8 Ibid s 40(4)(b). In s 40(4)(b) and s 40(5)(c) (see the text to note 12 *infra*), 'local authority' means: (1) in relation to England, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly; and (2) in relation to Wales, a county council or a county borough council: s 40(6). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 *et seq.* As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 *et seq.* As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

9 As to the metropolitan police district see PARA 137 *ante*.

10 Police Reform Act 2002 s 40(5)(a). As to the Metropolitan Police Authority see PARAS 137, 147 *et seq ante*.

11 Ibid s 40(5)(b). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

12 Ibid s 40(5)(c). See also note 8 *supra*.

13 Ie every police plan which is issued after 2 December 2002 (ie the date of commencement of *ibid* s 40) under the Police Act 1996 s 8: see PARA 162 *ante*.

14 Ie after 2 December 2002 (see note 3 *supra*).

15 Police Reform Act 2002 s 40(7)(a). As from a day to be appointed s 40(7) is repealed by the Police and Justice Act 2006 s 52, Sch 14 para 41, Sch 15 Pt 1(B). At the date at which this volume states the law no such day had been appointed.

16 Police Reform Act 2002 s 40(7)(b) (prospectively repealed: see note 15 *supra*).

17 Ibid s 40(7)(c) (prospectively repealed: see note 15 *supra*).

18 Ie provisions specified in *ibid* Sch 4 (as amended): see PARA 529 note 17 *ante*.

19 Ibid s 40(7)(d) (prospectively repealed: see note 15 *supra*).

20 Ibid s 40(7)(e) (prospectively repealed: see note 15 *supra*).

21 References to carrying on business include references to carrying out functions under any enactment: *ibid* s 47(2)(a). See also note 24 *infra*. For the meaning of 'enactment' see PARA 102 note 5 *ante*.

22 Ibid s 40(8)(a).

23 Ibid s 40(8)(b).

24 References to the employees of a person carrying on business include references to persons holding office under a person; and references to employers must be construed accordingly: *ibid* s 47(2)(b).

25 'Community safety functions' means any functions the carrying out of which would be facilitated by the ability to exercise one or more of the powers mentioned in *ibid* Sch 5 (see PARA 533 *post*): s 47(1).

26 Ie by means of accreditations under *ibid* s 41: see PARA 533 *post*.

27 Ibid s 40(8).

28 Ie under *ibid* s 41: see PARA 533 *post*.

29 Ibid s 40(9).

30 As to the Secretary of State see PARA 107 note 15 *ante*.

31 As to the British Transport Police see PARA 129 *ante*.

32 Police Reform Act 2002 s 43(1). A railway safety accreditation scheme is a scheme for the exercise, within a place specified in the Railways and Transport Safety Act 2003 s 31(1)(a)-(f) in England and Wales (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 283), by persons accredited by the chief constable of the British Transport Police Force under the scheme, of the powers conferred on those persons by their accreditation under that scheme: Police Reform Act 2002 s 43(2). As to the making of such regulations see s 43(3)-(10). As to the regulations that have been made see the Railway Safety Accreditation Scheme Regulations 2004, SI 2004/915.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/6. EXERCISE OF POLICE POWERS BY CIVILIANS/533. Accreditation under community safety accreditation schemes.

### **533. Accreditation under community safety accreditation schemes.**

Where a chief officer of police<sup>1</sup> has, for the purposes of a community safety accreditation scheme<sup>2</sup>, entered into any arrangements with any employer for or with respect to the carrying out of community safety functions<sup>3</sup> by employees of that employer<sup>4</sup>, the chief officer of police may, on the making of an application for the purpose by such person and in such manner as he may require, grant accreditation to any employee of the employer<sup>5</sup>. A chief officer of police must not grant accreditation to a person unless he is satisfied: (1) that that person's employer is a fit and proper person to supervise the carrying out of the functions for the purposes of which the accreditation is to be granted<sup>6</sup>; (2) that the person himself is a suitable person to exercise the powers that will be conferred on him by virtue of the accreditation<sup>7</sup>; (3) that that person is capable of effectively carrying out the functions for the purposes of which those powers are to be conferred on him<sup>8</sup>; and (4) that that person has received adequate training for the exercise of those powers<sup>9</sup>.

A person authorised or required to do anything by virtue of an accreditation: (a) must not be authorised or required by virtue of that accreditation to engage in any conduct<sup>10</sup> otherwise than in the course of his employment by the employer with whom the chief officer of police has entered into the arrangements for the carrying out of community safety functions<sup>11</sup>; and (b) may be so authorised or required subject to such other restrictions and conditions (if any) as may be specified in his accreditation<sup>12</sup>.

An accreditation, unless it is previously withdrawn or ceases to have effect<sup>13</sup>, remains in force for such period as may be specified in the accreditation; but it may be renewed at any time with effect from the time when it would otherwise expire<sup>14</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 For the meaning of 'community safety accreditation scheme' see PARA 532 note 3 ante.

3 For the meaning of 'community safety functions' see PARA 532 note 25 ante.

4 Police Reform Act 2002 s 41(1). For the meanings of 'employer' and 'employee' see PARA 532 note 24 ante.

5 Ibid s 41(2). A chief officer of police may charge such fee as he considers appropriate for one or both of the following: (1) considering an application for or for the renewal of an accreditation; (2) granting such an accreditation: s 41(5). As to the powers that may be conferred on accredited persons see s 41(3), Sch 5. A chief officer of police may not grant accreditation under s 41 to a weights and measures inspector: s 41(4A) (added by the Police and Justice Act 2006 s 52, Sch 14 para 42). As to the accreditation of weights and measures inspectors see the Police Reform Act 2002 s 41A (as added); and PARA 534 post. As to supplementary provisions relating to accreditation see PARA 535 post; and as to the code of practice relating to the exercise of the power of accreditation see PARA 536 post. As to offences against designated persons see PARA 537 post.

6 Ibid 41(4)(a).

7 Ibid s 41(4)(b).

8 Ibid s 41(4)(c).

9 Ibid s 41(4)(d).

10 For the meaning of 'conduct' see PARA 531 note 15 ante.

11 Police Reform Act 2002 s 41(6)(a).



12 Ibid s 41(6)(b).

13 An accreditation ceases to have effect if the accredited person ceases to be an employee of the person with whom the chief officer of police has entered into the arrangements for the carrying out of community safety functions, or if those arrangements are terminated or expire: *ibid* s 41(8). 'Accredited person' means a person in relation to whom an accreditation under s 41 is for the time being in force: s 47(1).

14 Ibid s 41(7).

## UPDATE

### 533 Accreditation under community safety accreditation schemes

NOTE 5--2002 Act Sch 5 amended: Education and Inspections Act 2006 s 107(4)-(6).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/6. EXERCISE OF POLICE POWERS BY CIVILIANS/534. Accreditation of weights and measures inspectors.

### 534. Accreditation of weights and measures inspectors.

The chief officer of police<sup>1</sup> of any police force<sup>2</sup> may, on the making of an application for the purpose by such person and in such manner as he may require, grant accreditation to a weights and measures inspector<sup>3</sup>. A chief officer of police must not grant accreditation to a weights and measures inspector unless he is satisfied that the inspector is a suitable person to exercise the powers that will be conferred on him by virtue of the accreditation<sup>4</sup>, and the inspector has received adequate training for the exercise of those powers<sup>5</sup>.

A weights and measures inspector to whom an accreditation is granted by a chief officer of police may exercise the powers conferred by the accreditation in the chief officer's police area<sup>6</sup>. A weights and measures inspector authorised or required to do anything by virtue of an accreditation is not authorised or required by virtue of that accreditation to engage in any conduct otherwise than in the course of his duties as a weights and measures inspector<sup>7</sup>; and is so authorised or required subject to such other restrictions and conditions (if any) as may be specified in his accreditation<sup>8</sup>. An accreditation, unless it is previously withdrawn or ceases to have effect<sup>9</sup>, remains in force for such period as may be specified in the accreditation, but it may be renewed at any time with effect from the time when it would otherwise expire<sup>10</sup>. An accreditation ceases to have effect if the accredited inspector ceases to hold office as a weights and measures inspector<sup>11</sup>.

The Secretary of State<sup>12</sup> may by order<sup>13</sup> provide for these provisions<sup>14</sup> and any other provision<sup>15</sup> relating to accredited inspectors<sup>16</sup> to apply (with or without modification) in relation to persons of a description specified in the order<sup>17</sup>.

1 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

2 For the meaning of 'police force' see PARA 102 note 11 ante.

3 Police Reform Act 2002 s 41A(1) (s 41A added by the Police and Justice Act 2006 s 15(1)). 'Weights and measures inspector' means an inspector of weights and measures appointed under the Weights and Measures Act 1985 s 72(1) (see WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 23): Police Reform Act 2002 s 47(1) (definition added by the Police and Justice Act 2006 s 52, Sch 14 para 45). As to the powers that may be conferred on a weights and measures inspector see the Police Reform Act 2002 s 41A(3) (as so added), Sch 5A (added by the Police and Justice Act 2006 s 15(2), Sch 7).

4 Police Reform Act 2002 s 41A(4)(a) (as added: see note 3 supra).

- 5 Ibid s 41A(4)(b) (as added: see note 3 supra). A chief officer of police may charge such fee as he considers appropriate for one or both of the following: (1) considering an application for, or for the renewal of, an accreditation; (2) granting an accreditation: s 41A(5) (as so added).
- 6 Ibid s 41A(2) (as added: see note 3 supra). For the meaning of 'police area' see PARA 136 note 2 ante.
- 7 Ibid s 41A(6)(a) (as added: see note 3 supra).
- 8 Ibid s 41A(6)(b) (as added: see note 3 supra).
- 9 Ie in accordance with ibid s 41A(8) (as added): see the text to note 11 infra.
- 10 Ibid s 41A(7) (as added: see note 3 supra).
- 11 Ibid s 41A(8) (as added: see note 3 supra).
- 12 As to the Secretary of State see PARA 107 note 15 ante.
- 13 No such order may be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament: Police Reform Act 2002 s 41B(3) (s 41B added by the Police and Justice Act 2006 s 16). The power to make orders is exercisable by statutory instrument: Police Reform Act 2002 s 105(1). An order may make different provision for different cases; make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit: see s 105(4). The provision which may be made by such an order includes such modifications of other enactments as appear to the Secretary of State to be necessary or appropriate: s 41B(2) (as so added). At the date at which this volume states the law no such order had been made.
- 14 Ie ibid s 41A (as added). For the meaning of 'enactment' see PARA 102 note 5 ante.
- 15 Ie any other provisions of ibid Pt 4 Ch 1 (ss 38-47) (as amended).
- 16 'Accredited inspector' means a weights and measures inspector in relation to whom an accreditation under ibid s 41A (as added) is for the time being in force: s 47(1) (definition added by the Police and Justice Act 2006 Sch 14 para 45).
- 17 Police Reform Act 2002 s 41B(1) (as added: see note 13 supra).

## UPDATE

### **534-535 Accreditation of weights and measures inspectors, Supplementary provisions relating to designations and accreditations**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/6. EXERCISE OF POLICE POWERS BY CIVILIANS/535. Supplementary provisions relating to designations and accreditations.

### **535. Supplementary provisions relating to designations and accreditations.**

A person who exercises or performs any power or duty in relation to any person in reliance on his designation<sup>1</sup> or his accreditation<sup>2</sup>, or who purports to do so, must produce that designation or accreditation to that person, if requested to do so<sup>3</sup>. A power exercisable by any person in reliance on his designation by a chief officer of police<sup>4</sup> or his accreditation<sup>5</sup> is exercisable only by a person wearing such uniform as may be determined or approved for these purposes by

the chief officer of police who granted the designation or accreditation<sup>6</sup>, and identified or described in the designation or accreditation<sup>7</sup>. Further, in the case of an accredited person, such a power is exercisable only if he is also wearing such badge as may be specified by the Secretary of State<sup>8</sup>, and is wearing it in such manner, or in such place, as may be so specified<sup>9</sup>. A chief officer of police who has granted a designation or accreditation to any person<sup>10</sup>, or an accreditation to any weights and measures inspector<sup>11</sup>, may at any time, by notice to the designated or accredited person or the accredited inspector, modify or withdraw that designation or accreditation<sup>12</sup>.

For the purposes of determining liability for the unlawful conduct of employees of a police authority<sup>13</sup>, conduct by such an employee in reliance or purported reliance on a designation<sup>14</sup> must be taken to be conduct in the course of his employment by the police authority; and, in the case of a tort, that authority falls to be treated as a joint tortfeasor accordingly<sup>15</sup>. For the purposes of determining liability for the unlawful conduct of employees of a contractor<sup>16</sup>, conduct by such an employee in reliance or purported reliance on a designation<sup>17</sup> must be taken to be conduct in the course of his employment by that contractor; and, in the case of a tort, that contractor falls to be treated as a joint tortfeasor accordingly<sup>18</sup>. For the purposes of determining liability for the unlawful conduct of employees of a person with whom a chief officer of police has entered into any arrangements for the purposes of a community safety accreditation scheme<sup>19</sup>, conduct by such an employee in reliance or purported reliance on an accreditation<sup>20</sup> must be taken to be conduct in the course of his employment by that employer; and, in the case of a tort, that employer falls to be treated as a joint tortfeasor accordingly<sup>21</sup>. For the purposes of determining liability for the unlawful conduct of weights and measures inspectors, conduct by such an inspector in reliance or purported reliance on an accreditation<sup>22</sup> must be taken to be conduct in the course of his duties as a weights and measures inspector; and, in the case of a tort, the local weights and measures authority by which he was appointed falls to be treated as a joint tortfeasor accordingly<sup>23</sup>.

1     Ie under the Police Reform Act 2002 s 38 (as amended; prospectively amended) (see PARA 529 ante) or s 39 (see PARA 531 ante).

2     Ie under *ibid* s 41 (see PARA 533 ante) or s 41A (as added) (see PARA 534 ante).

3     *Ibid* s 42(1) (amended by the Police and Justice Act 2006 s 52, Sch 14 para 43(1), (2)). As from a day to be appointed the following provisions have effect. The Police Reform Act 2002 s 42(1) (as amended) does not apply to a person who exercises or performs any power or duty in reliance on his designation under s 38 (as amended; prospectively amended) as a community support officer, or who purports to do so: s 42(1A) (prospectively added by the Police and Justice Act 2006 s 9, Sch 5 paras 1, 3(1), (3)). A person who exercises or performs any power or duty in relation to any person in reliance on his designation under the Police Reform Act 2002 s 38 (as amended; prospectively amended) as a community support officer, or who purports to do so, must produce to that person evidence of his designation, if requested to do so: s 42(A1) (prospectively added by the Police and Justice Act 2006 Sch 5 paras 1, 3(1), (2)). A person who exercises or performs any non-standard power or non-standard duty in relation to any person in reliance on his designation under the Police Reform Act 2002 s 38 (as amended; prospectively amended) as a community support officer, or who purports to do so, must produce to that person evidence that the power or duty has been conferred or imposed on him, if requested to do so: s 42(B1) (prospectively added by the Police and Justice Act 2006 Sch 5 paras 1, 3(1), (2)). A power or duty is 'non-standard' if it is not one of the standard powers and duties of a community support officer: Police Reform Act 2002 s 42(C1) (prospectively added by the Police and Justice Act 2006 Sch 5 paras 1, 3(1), (2)). At the date at which this volume states the law no such day had been appointed. As to offences against designated persons see PARA 537 post.

4     Ie under the Police Reform Act 2002 s 38 (as amended; prospectively amended) (see PARA 529 ante) or s 39 (see PARA 531 ante). For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

5     Ie under *ibid* s 41: see PARA 533 ante.

6     *Ibid* s 42(2)(a). A police officer of or above the rank of inspector may direct a particular investigating officer not to wear a uniform for the purposes of a particular operation; and, if he so directs, s 42(2) does not apply in relation to that investigating officer for the purposes of that operation: s 42(2A) (s 42(2A), (2B) added by the Serious Organised Crime and Police Act 2005 s 122(1), (2)(b)). 'Investigating officer' means a person designated as an investigating officer under the Police Reform Act 2002 s 38 (as amended; prospectively amended) by the

chief officer of police of the same force as the officer giving the direction: s 42(2B) (as so added). As to ranks see PARA 230 ante.

7 Ibid s 42(2)(b).

8 As to the Secretary of State see PARA 107 note 15 ante.

9 Police Reform Act 2002 s 42(2).

10 Ie under ibid s 38 (as amended; prospectively amended) (see PARA 529 ante), s 39 (see PARA 531 ante) or s 41 (see PARA 533 ante).

11 Ie under ibid s 41A (as added): see PARA 534 ante.

12 Ibid s 42(3) (amended by the Police and Justice Act 2006 Sch 14 para 43(1), (3)). Where any person's designation under the Police Reform Act 2002 s 39 (see PARA 531 ante) is modified or withdrawn, the chief officer giving notice of the modification or withdrawal must send a copy of the notice to the contractor responsible for supervising that person in the carrying out of the functions for the purposes of which the designation was granted: s 42(5). Where any person's accreditation under s 41 (see PARA 533 ante) is modified or withdrawn, the chief officer giving notice of the modification or withdrawal must send a copy of the notice to the employer responsible for supervising that person in the carrying out of the functions for the purposes of which the accreditation was granted: s 42(6). For the meaning of 'employer' see PARA 532 note 24 ante. Where the accreditation of a weights and measures inspector under s 41A (as added) (see PARA 534 ante) is modified or withdrawn, the chief officer giving notice of the modification or withdrawal must send a copy of the notice to the local weights and measures authority by which the inspector was appointed: s 42(6A) (added by the Police and Justice Act 2006 Sch 14 para 43(1), (4)). As to local weights and measures authorities see the Weights and Measures Act 1985 s 69 (as amended); and WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 20.

13 For the meaning of 'police authority' see PARA 139 note 1 ante. As to liability for the unlawful conduct of constables generally see the Police Act 1996 s 88; and PARA 105 ante. As to liability for the unlawful conduct of members of a police force engaged on temporary service outside their force see s 97; and PARA 428 ante.

14 Ie under the Police Reform Act 2002 s 38 (as amended; prospectively amended): see PARA 529 ante.

15 Ibid s 42(7). As to joint tortfeasors see TORT vol 45(2) (Reissue) PARA 683.

16 Ie within the meaning of ibid s 39: see PARA 531 ante.

17 Ie under ibid s 39: see PARA 531 ante.

18 Ibid s 42(9).

19 For the meaning of 'community safety accreditation scheme' see PARA 532 note 3 ante.

20 Ie under the Police Reform Act 2002 s 41: see PARA 533 ante.

21 Ibid s 42(10).

22 Ie under ibid s 41A (as added): see PARA 534 ante.

23 Ibid s 42(11) (added by the Police and Justice Act 2006 Sch 14 para 43(1), (5)).

## UPDATE

### **534-535 Accreditation of weights and measures inspectors, Supplementary provisions relating to designations and accreditations**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **535 Supplementary provisions relating to designations and accreditations**

NOTE 3--Day now appointed in relation to Police and Justice Act 2006 Sch 5 paras 1, 3: SI 2007/3203.

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/6. EXERCISE OF POLICE POWERS BY CIVILIANS/536. Code of practice.

### 536. Code of practice.

The Secretary of State<sup>1</sup> must issue a code of practice about the exercise and performance by chief officers of police<sup>2</sup> of their powers and duties in relation to the exercise of police powers by civilians<sup>3</sup>; and the Secretary of State may from time to time revise the whole or any part of any such code of practice<sup>4</sup>.

Before issuing or revising a code of practice, the Secretary of State must consult with the Association of Police Authorities<sup>5</sup>, the Association of Chief Police Officers<sup>6</sup>, persons whom he considers to represent the interests of local authorities<sup>7</sup>, the Mayor of London<sup>8</sup>, and such other persons as he thinks fit<sup>9</sup>. The Secretary of State must lay any code of practice issued by him, and any revisions of any such code, before Parliament<sup>10</sup>.

In discharging any function to which a code of practice under these provisions relates, a chief officer of police must have regard to the code<sup>11</sup>.

1 As to the Secretary of State see PARA 107 note 15 ante.

2 For the meaning of 'chief officer of police' see PARA 105 note 7 ante.

3 Police Reform Act 2002 s 45(1) (amended by the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 179, 183(1), (2), Sch 17 Pt 2). The powers and duties referred to in the text are those under the Police Reform Act 2002 Pt 4 Ch 1 (ss 37-47) (as amended).

4 Ibid s 45(2).

5 Ibid s 45(3)(c) (s 45(3)(c), (f) substituted by the Police and Justice Act 2006 s 6(1), Sch 4 para 15). As to consultation with the Association of Police Authorities see PARA 163 note 7 ante.

6 Police Reform Act 2002 s 45(3)(f) (as substituted: see note 5 supra). As to consultation with the Association of Chief Police Officers see PARA 163 note 7 ante. As to the Association of Chief Police Officers see PARA 423 ante.

7 Ibid s 45(3)(g). For these purposes, 'local authorities' means district councils, London borough councils, county councils in Wales, county borough councils, the Common Council of the City of London and the Council of the Isles of Scilly: s 45(6). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

8 Ibid s 45(3)(h). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

9 Ibid s 45(3)(i).

10 Ibid s 45(4).

11 Ibid s 45(5).

Halsbury's Laws of England/POLICE (VOLUME 36(1) (2007 REISSUE))/6. EXERCISE OF POLICE POWERS BY CIVILIANS/537. Offences against designated and accredited persons.

### 537. Offences against designated and accredited persons.

Any person who assaults a designated person<sup>1</sup>, an accredited person<sup>2</sup> or an accredited inspector<sup>3</sup>, in the execution of his duty<sup>4</sup>, or a person assisting such a person or inspector in the execution of his duty<sup>5</sup>, is guilty of an offence<sup>6</sup>. Any person who resists or wilfully obstructs a designated person, an accredited person or an accredited inspector, in the execution of his duty<sup>7</sup>, or a person assisting such a person or inspector in the execution of his duty<sup>8</sup>, is guilty of an offence<sup>9</sup>. Any person who, with intent to deceive:

- 295 (1) impersonates a designated person, an accredited person or an accredited inspector<sup>10</sup>;
- 296 (2) makes any statement or does any act calculated falsely to suggest that he is a designated person, an accredited person or an accredited inspector<sup>11</sup>; or
- 297 (3) makes any statement or does any act calculated falsely to suggest that he has powers as a designated or accredited person or as an accredited inspector that exceed the powers he actually has<sup>12</sup>,

is guilty of an offence<sup>13</sup>.

1 For the meaning of 'designated person' see PARA 529 note 11 ante.

2 For the meaning of 'accredited person' see PARA 533 note 13 ante.

3 For the meaning of 'accredited inspector' see PARA 534 note 16 ante.

4 See the Police Reform Act 2002 s 46(1)(a), (b), (ba) (s 46(1)(ba) added by the Police and Justice Act 2006 s 52, Sch 14 para 44(1), (2)(a)). References to the execution by a designated person, accredited person or accredited inspector of his duty are references to his exercising any power or performing any duty which is his by virtue of his designation or accreditation: Police Reform Act 2002 s 46(4) (amended by the Police and Justice Act 2006 Sch 14 para 44(1), (4)).

5 See the Police Reform Act 2002 s 46(1)(c) (amended by the Police and Justice Act 2006 Sch 14 para 44(1), (2)(b)).

6 Police Reform Act 2002 s 46(1). The penalty for such an offence is, on summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both: see s 46(1). As to the standard scale see PARA 127 note 2 ante.

7 See *ibid* s 46(2)(a), (b), (ba) (s 46(2)(ba) added by the Police and Justice Act 2006 Sch 14 para 44(1), (2)(a)).

8 See the Police Reform Act 2002 s 46(2)(c) (amended by the Police and Justice Act 2006 Sch 14 para 44(1), (2)(b)).

9 Police Reform Act 2002 s 46(2). The penalty for such an offence is, on summary conviction, imprisonment for a term not exceeding one month or a fine not exceeding level 3 on the standard scale, or both: see s 46(2). As from a day to be appointed the term of imprisonment is increased to 51 weeks: see s 46(2) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 57). At the date at which this volume states the law no such day had been appointed.

10 Police Reform Act 2002 s 46(3)(a) (amended by the Police and Justice Act 2006 Sch 14 para 44(1), (3)(a)).

11 Police Reform Act 2002 s 46(3)(b) (amended by the Police and Justice Act 2006 Sch 14 para 44(1), (3)(b)).

12 Police Reform Act 2002 s 46(3)(c) (amended by the Police and Justice Act 2006 Sch 14 para 44(1), (3)(c)).

13 Police Reform Act 2002 s 46(3). The penalty for such offences is, on summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both: s 46(3).